

**Legal and Penal Institutions Within a Middle-Class  
Perspective in Colonial Bengal: 1854 - 1910.**

by  
Anindita Mukhopadhyay

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**School of Oriental and African Studies, London**

**Department of History**

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## Abstract

This thesis illustrates and analyses the ambiguity of the Bengali middle-class perception regarding the colonial legal and penal institutions, specifically the criminal courts and the jails, in the second half of the nineteenth century. The institutional functioning of the criminal courts and the jails form a marginal part of the thesis. The main focus is the *bhadralok* perception of these institutions as the repository of "law and order" as established by the colonial rule of law. This thesis contends that though the perceived need for preserving law and order through the rule of law came from the colonial government in the first half of the nineteenth century, it had the approval of the *bhadralok*.

It is further argued that the categories of the criminals in the Bengal Presidency (or province), generated by the colonial government at the site of the criminal courts and the jails, were congruent with the divide separating the higher castes from the lower castes. These categories helped the *bhadralok* to take on a non-criminal identity, based on their perception of the colonial discourse on the criminal classes. Further, from the mid-nineteenth century to the late nineteenth century, the increasing familiarity with the courts and the jails enabled the *bhadralok*, on the basis of their own changing experience, to construct a non-criminal identity for themselves.

The central theme of the thesis is therefore the evolution of a *bhadralok* non-criminal identity revolving around their experience of the courts and the jails throughout the mid to late nineteenth century. On the basis of this non-criminal identity, the *bhadralok* in the late nineteenth century stood in opposition to the colonial government's mechanisms of control, namely the criminal courts and the jails, by questioning its right to impose such control on a non-criminal section of society, and thereby immediately imbuing the colonial government with illegality and oppression. But this was possible only after the identity of criminality had been grafted onto the lower sections of the society, the *chhotolok*, as it enabled the *bhadralok* to construct the mental image of the criminal courts and the jails as generally applicable only to the *chhotolok*. This, in turn, rendered the site of the criminal courts and the jails as spaces reserved for the lower sections of society.

The first decade of the twentieth century is examined briefly to bring out the contrast of this period as against the *bhadralok* discourse evolving through the mid to late nineteenth century, which had set out the space of the criminal courts and the jails as desecrated space, unfit for the *bhadralok* to occupy. Against this background, the national movement endowed the legal and penal procedure with illegality and misrule of law, when they operated on the *bhadralok* as political prisoners. This was in diametrical contrast to the perception of the legitimacy of the legal and penal institutions when they operated on the *chhotolok* with the end of preserving law and order through these two institutions.



### **Acknowledgement**

I have wanted to do research on criminality and attitudes relating to it in colonial Bengal as the subject has always fascinated me. The project came off the ground finally in 1996 because of the constant encouragement and patient supervision of Professor David Arnold. The constant fear of limited time running out provided that additional incentive to finish.

The research for my thesis was done in various libraries and archives which fortunately provided a lot of rich data. The kindness of the staff in the National Archives of India, Nehru Memorial Library in Delhi, made it possible for me to collect a range of data covering my entire period of research and beyond. I owe thanks especially to Udayanda of the West Bengal State Archives for suggesting alternative sources which would have never occurred to me. Writers Building in Calcutta proved to be useful for the twentieth century. The National Library in Calcutta offered a tantalising glimpse of sources that would have been invaluable had I been able to take a look at them. Unfortunately, because my time in Calcutta was limited, I had to come away to London with the knowledge that most of it was still unexamined.

My field-trip to the districts of Bankura, Midnapur and Burdwan was successful, as I managed to get a wide variety of sources, ranging from police reports, confessions of dacoits (carried off from the Bankura Police station, of all places, where they were lying forgotten in a corner), to criminal court records in the Midnapur District Collectorate. From the Collectorate I also managed to get, (as the staff caught some of my enthusiasm for locked cupboards, and burst open a very dusty cupboard with a very rusty lock), the jail records of Midnapur Central Jail covering the period 1942-1943. Unfortunately, towards the end of my second year I realised, given the all-important consideration of the word-limit, that the 1940s could not be included. But I hope the infectious enthusiasm of the Staff at the Midnapur Collectorate would be justified some day, when I can manage to use some of the sources I found so fortuitously. The same sentiments accompany the sources found at the Midnapur Central Jail, where the jailor, Mr. Bannerjee, went out of his way to help me gather

material, but which I unfortunately could not use in the thesis for want of space. However, the High Court in Calcutta obdurately and disappointingly withheld the sources I wanted. Stacks of criminal records were piled high in the record room, but there was no access to them, apart from a few known political trials and some sensational ones. The Alipur Bomb case and the Maniktala Bomb case I found in Victoria Memorial Archive.

My stints at the India Office Library were extremely useful, as I found almost all my vernacular tracts there. Mrs. A. Ghosh, an invaluable friend and guide through the complicated process of deciding the kind of tracts useful for me, deserves my sincerest thanks for all the help and innumerable cups of tea she has given me. The Annual Jail Reports, Thugi and Dacoity Reports, the Bengal Judicial Proceedings, the Native Newspaper Reports, all obtained from India Office Records, form the integral part of my thesis. The Library at SOAS formed an extremely useful supplementary data-bank to IOL.

All my friends have been magnificent. Rutger saved me from becoming a basket-case by initiating me into the complicated world of computers. I am still not even half-way there, but it is certainly not because he did not try. Mala prevented me from leaving for home half-way down the third year when I was convinced I was wasting my time, and of course, Professor Arnold's. And they provided muscle-power to shift the mountaineous pile of papers and files whenever I got notice from the numerous Halls of Residence for students to quit my room. My heart-felt thanks to Chaya who allowed me to stay in her room for two months with all my books and papers spread over her desk and shelves. Lopamudra and Ajay Kumar kindly went through my thesis and provided useful insights; so did Chaya, Debasmita, Rutger, Samita, Ujjayini, and Sudeshna. It goes without saying that the mistakes that still remain are mine alone.

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## GLOSSARY

adalat	court
amla	an office clerk.
amin	a land surveyor
baaje adaye	misappropriated funds
baakrand	word-prostitute
babu	mode of address, term also pejoratively denotes superficiality of a class
Badasaheb	Bengali term for Lieutenant-Governor, European superior officer
badmaish	bad character
bahaduri	showing off, an act of bravery
badalok/ bhadralok	repectable Bengali men, or big people, belonging to the upper class
badamanushi	ostentatious behaviour
bargi	Maratha raiders
begar	forced labour
bhadrasantan	son of a respectable man
borobabu	senior babu
boshtom	ministrel
brahmottar	tax-free land given to Brahmins
buddhijibi	intellectuals
burkundaz	armed force
chaprasi	chaprasi
chhotolok/ eetar lok	little people i.e lower classes
chor	thief
chowkidar	watchmen
coolies	labourers
darogah	inspector
dafadar	Indian officer, jails, police
debottar	tax-free lands given to temples
Dharma	Justice
dharmabatar	reincarnation of justice
dhing	protest
dhobi	washerman
diwan	estate manager
diwani	civil
duratma	scoundrel
ekraar	confession

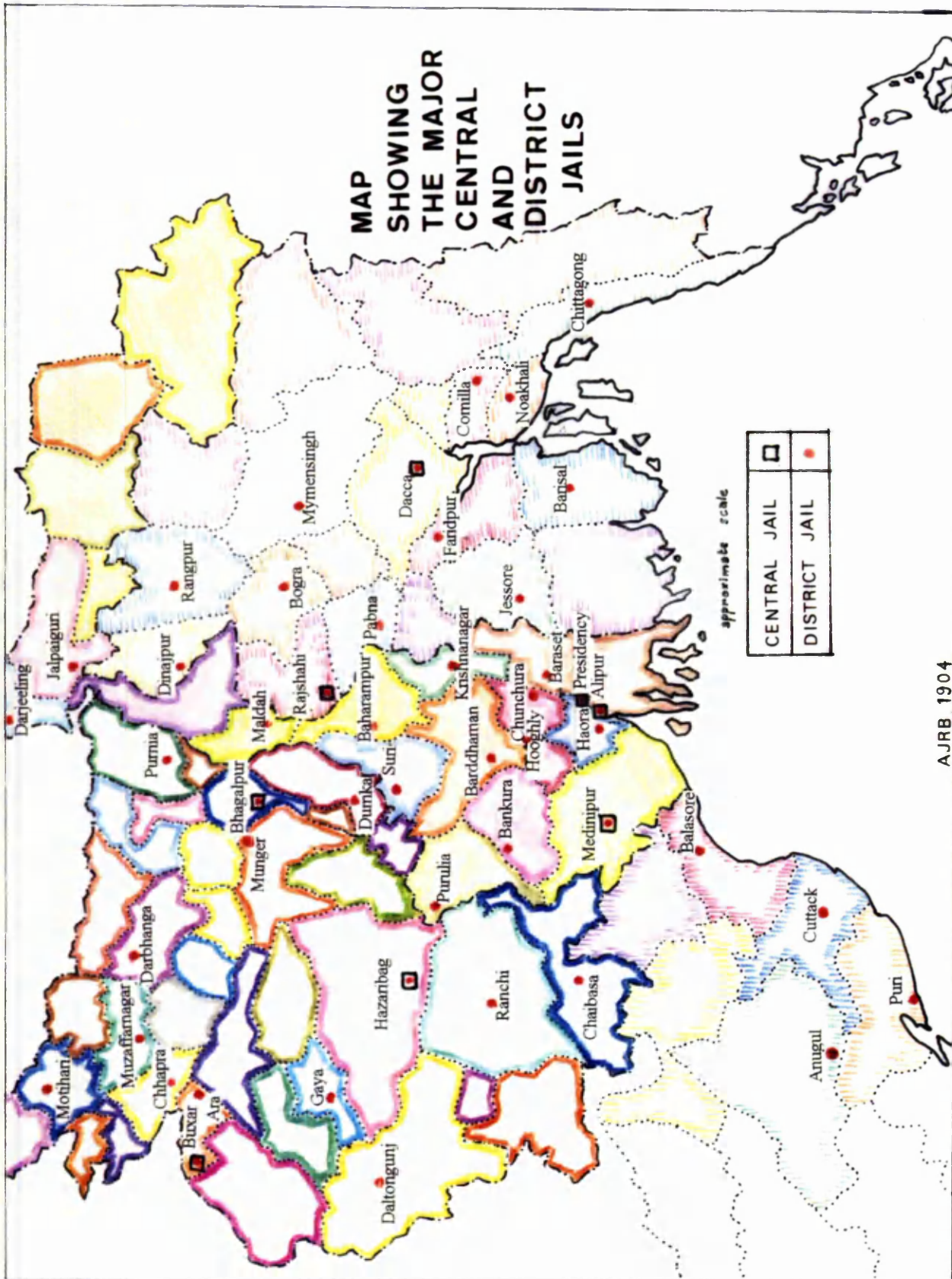
faujdari	criminal
gaayen	singer
galakata	cut-throat
ganga-jatra	a ritual of taking a dying person to the river
garod selami	prison tax
Gowala	caste of cowherds
goyenda	detective
hak	right
hairanbadi	the house of trouble, jail
hajut	lock-up.
haabshi	black eunuch
hukum	order
hul	rebellion
huzur	your honour
inchaaf	justice
jaal	false
jamadar	police official
jamiar	woollen garment
kaliyuga	one of the four epochs in Hindu philosophy
Karmakar/ (Kamar)	blacksmith
kancha	unripe
karta	head of the household
kari	unit of exchange
khalasi	sailor
khetab	title
khudmutger	personal attendant
khuney	murderer
kuthi	residence
lajja	shame
lathials	men expert in handling a long wooden staff or lathi
Lat-saheb	Lieutenant-Governor
lobh	greed
manhani	damage to self-respect
mard	a masculine
majhi	boatman
methar	sweeper
mukhtar	lawyers practicing in the lower courts
mrityu	death
naib	manager
napit	barber
paalaa	long song
paap	sin

pabda	a short, thick stick
paharadar	constable
pat	painting in a certain style
phataka	lock-up
prahasan	farce
praja	subject
pyke	soldier
raja	king
rajbaadi	palace
rajpurush	royal official
sala	abuse, literally wife's brother.
saheb	European, official
samaj	society
sarkiwala	man with a weapon like a spear
swasurbaadi	in-laws' residence
thana	police station
tyaag	sacrifice
ukil/vakil	lawyer
Yama	God of Death
yayavar	nomad

## Abbreviations

AJRB	Annual Jail Report, Bengal
ARSDB	Annual Report on the Suppression of Dacoity in Bengal
CRPC	Criminal Procedure Code
CTA	Criminal Tribes Act
GOB	Government of Bengal
GOI	Government of India
IG	Inspector General
IOL	India Office Library
IPC	Indian Penal Code
NAI	National Archives of India
NNRB	Native Newspaper Reports, Bengal
WBSA	West Bengal State Archives

**MAP  
SHOWING  
THE MAJOR  
CENTRAL  
AND  
DISTRICT  
JAILS**



approximate scale

CENTRAL JAIL	<input type="checkbox"/>
DISTRICT JAIL	<input checked="" type="checkbox"/>

AJRB 1904



## **Introduction**

This thesis situates the legal and penal institutions introduced by the British within the structure of the indigenous society of Bengal. By the 1850s the Bengal Presidency encompassed a huge geographical area, spanning Bihar, Orissa and Assam, as well as Bengal proper, and containing a multitude of castes, sub-castes, tribal populations and peoples of different religions and sects. The administration had to devise strategies to control this diverse as well as stratified indigenous society for the smooth expropriation of surplus, and for the preservation of law, order and property. As a step towards accomplishing such control, two major administrative necessities were felt to be the identification of the criminal sections of the society and the location of the areas with the highest concentration of criminality.

This thesis focuses on two key institutions, the criminal courts and the jails, through which the colonial power sought to identify and control such sections of the hierarchical society of Bengal as a part of its administrative strategy for the maintenance of law and order. The scope of this study is restricted to the examination of issues pertinent to the changing nature of these legal and penal institutions mainly in Bengal proper, as they were perceived by the Bengali *bhadralok* (a term that will be more closely examined subsequently) in the late nineteenth and early twentieth centuries. The relatively narrow focus of this thesis does not diminish the importance of related themes, such as the functioning of the police. There is also a vast body of official documents on the jails and the criminal courts, detailing their manner of administration and functions, and about the officials engaged in them. These practical details, though valuable empirical data, do not fall immediately within the purview of the thesis. Nor does the exact administrative details of the treatment of the Bengali population caught within their folds. What this thesis emphasises is the public quality of both these institutions as instruments of control in a colonised society. Regardless of caste and class, there was a spectacle attached to these institutions that made the criminals, and suspected criminals, stand out as an identifiable

element distinct from the general mass of the civil population. The identification of the criminal was done by the police department as well, but as this area has already been well-researched, this thesis will not consider the role of the police to any great extent.

Apart from the actual judicial procedure, the function of the trials also served to address the problem of the nature of the criminality peculiar to a geographical area. There was an acknowledgement by the colonial government of the role the land-owners played in undermining the law and order situation by their extensive feuds against each other, and their part in the endemic dacoity for which the Lower Provinces of Bengal had been notorious. But although their complicity in lawlessness was well-known, there was little proof, while the men employed by the leading landlords and zamindars could be more easily identified and successfully prosecuted. This resulted in certain sections of society, invariably from the lower castes, being collectively suspect in the eyes of the colonial administration. This process of identification and stereotyping by the colonial administration is taken up for discussion in Chapter One.

While this process helped the colonial administration to build up a body of knowledge about crime at various levels of society, especially the lower castes, it likewise helped the educated section of Bengali society to free itself from the taint of criminality. The exceptional few from this class who found themselves in the courts and jails were, therefore, ruined in the eyes of the *bhadralok*. Moreover, as part of its administrative strategy, the colonial government categorised on the basis of the frequent court appearances, trials, and jail sentences imposed on the members of certain castes in the criminal courts, as the "criminal classes" within the society. As these trials were held publicly, and the criminals indicted publicly, there was a great involvement of the public with the judicial process. Opinions about the guilt or innocence of the criminals prosecuted was not just the concern of the judge and jury, but also of the people witnessing the trials and hearing the sentences passed. Therefore, with the public trials of dacoits, and much publicised law-breakers like thieves, together with their accompanying punitive sentences, there grew up within nineteenth-century, middle-class Bengali society a notion of criminality that closely coincided with the definition of the colonial administration.

Statistical data and empirical evidence gave further support to the view that the bulk of the criminals came from the lower castes. The reasons for this could be various, and did not necessarily point to the actual criminality of the lower castes as a whole. For instance, as the strong-arm men of the propertied classes in agrarian riots, family feuds, and sudden quarrels, the lower castes were often brought before the criminal courts, and such appearances, in their turn, reinforced the close association of the lower castes with criminal trials and the jails. Thus, it became an easy task for the educated middle classes to identify the criminal classes as being primarily recruits from the lower-caste sections of Bengali society. The converse of this was the distancing of the *bhadralok* from the criminal trials and their concomitant jail sentences. These two institutions were seen as the two main public arenas that had been introduced by colonial rule with which the educated middle-class elite or the *bhadralok* with their high-caste status, their social standing, and their morals, could not be associated. The first and second chapters of the thesis deal with this self-identification with non-criminality that the *bhadralok* had drawn around themselves like an invisible barrier, and how gradually this barrier was breached by the colonial government.

As the century progressed, the courts and jails made increasing inroads into the carefully constructed identity of the Bengali educated elite, who could no longer enjoy the privilege of being above the punitive operation of the law, and the imposition of humiliating jail sentences. Chapter Two deals with such inroads, but it also examines the parameters of the Bengali middle class's acceptance of the "rule of law". The abstract principles of the rule of law could be best appreciated by the middle classes when at the receiving end of the legal and penal institutions stood a person who could not be identified with the Bengali elite. Therefore, the operation of the rule of law against such evident outsiders as the Santals or the sepoys of 1857, or more generally, against the "*chhotolok*", or "little people", gave a sense of equilibrium to the *bhadralok* in the 1850s. This implied, in effect, a core of self-belief in their non-criminal identity, which was a curious fusion of the sense of superior status, moral uprightness and equanimity that informed the *bhadralok* as a class. Chapter Two also deals with the manner in which this sense of equilibrium was gradually displaced

and the bhadralok, too, were included along with the unprivileged chhotolok, among those on trial and in prison. Thus the focus of the second chapter is on the changing legal status of the bhadralok, when the colonial legal and penal machinery began to affect the privileged section of Bengali society.

Yet, in spite of feeling the weight of the courts and jails, there still remained certain congruencies in attitude between the bhadralok and the colonial government. A vast body of knowledge about criminal elements, and the kinds of crime that were peculiar to the Lower Provinces, like "torchlight dacoity", was generated by the colonial regime for better categorisation and administration of Bengal. This knowledge was publicly displayed in the government's administrative reports, annual reports, and in various resolutions and minutes. These facts were made public by the ruling power, in a self-corrective bid to make the knowledge of the subject-race easily accessible to the colonial officials at a fairly general level. Paradoxically, the process of self-education acted in reverse, and the subject-race was made aware of these facts regarding the functioning of the administration. This body of knowledge was appreciated by the bhadralok as a means to judge the performance and standard of the colonial government. The administration's reports thus performed the double-edged function of enlightening the ruled as well as the rulers. How the colonial discourse on the crime and the criminal peculiarities of Bengal formed part of the chhotolok/bhadralok divide is the subject of the third chapter. These voluminous reports removed the bewilderment of the early nineteenth-century intellectuals about the obscure judicial procedure and the incomprehensible punishments that accompanied the trials. The disjuncture between the fast-disappearing, familiar world they had been used to and the immediacy of colonial rule with its alien judicial and penal systems could at first only be bridged by identifying colonial rule with the Puranic tradition and thus ascribing such judicial and penal anomalies to the whims of the gods. Later in the century, the government's reports and records made public the principles behind the functioning of the courts and jails, and the bhadralok became appreciative of the rationale behind the rule of law. But with the growth of political awareness that accompanied the bhadralok's judicial and jail experiences came a third stage - the identification of the colonial government as the

source of judicial and penal anomalies. Thus alongside the inroads of the colonial administration into the prestige of the *bhadralok* in the mid and late nineteenth century, there grew an awareness of the punitive aspect of these institutions as the instruments of colonial rule. At the same time, with the partial incorporation of the *bhadralok* into the category of the criminal and unprivileged *chhotolok*, the "rule of law" became suspect. Chapter Four deals with the manner in which the legal and penal institutions of the colonial government were increasingly subject to *bhadralok* criticism.

That chapter also discusses how attempts were made to keep the *zenana* or the *antahpur* (the women's quarters), out of the public arenas of the courts and the jails. There were women criminals who found their way into courts and jails but the *bhadralok* ignored them. Even in the *bhadralok* concern expressed for the health of convicts in the face of harsh penal discipline, it was almost as if the jails were inhabited exclusively by men. Only the criminal courts focused on the women prisoners, but the silence about such trials and the imprisonment of women criminals in the newspapers or in the literature of the nineteenth century is noteworthy. The thesis looks at this silence on the question of the trial and imprisonment of women through the paradigm advanced by Partha Chatterjee,<sup>1</sup> of the *antahpur* as an "uncolonised interior". In fact, the argument runs into difficulties as soon as the *bhadralok*, with their insistence on the preservation of the *antahpur*, the secluded women's domain, are removed from the scene. Was the colonial experience only confined to the *bhadralok*? This thesis applies the argument specifically to the *bhadralok*'s construction of an "uncolonised interior", which resisted the intrusion of the colonial institutions, but contends that such an application was severely restricted, especially to the *bhadralok*, as the rest of the female population could be dismissed as unimportant, not being members of the *antahpur*.

The fourth chapter also notes that with the induction of the women of the higher castes into the public arena of the courts and the jails in the national movement in 1921-22, the *bhadramahila* for the first time were exposed to the criminal woman within the jail.

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<sup>1</sup> Partha Chatterjee, *The Nation and its Fragments: Colonial and Postcolonial Histories*, Princeton, 1993, pp.116-157.

There was an attempt by the *bhadramahila* to restore these women to the position of women who had a domestic life, with the history of homes behind them, but this was done from a middle-class perspective, with no understanding of the class which these women came from. An attempt was made to see the marginalised group of women criminals in the traditional nurturing role. The *bhadramahila* thus drew women criminals into what was perceived to be the woman's natural world, by asserting that the physical presence of women convicts in prisons did not automatically divest them of "femininity". But this area is beyond the purview of this thesis and Chapter Four discusses only the lack of middle-class women's involvement in the Swadeshi Movement of 1905-06.

There also developed within *bhadralok* discourse a justification for these punitive institutions against members of the *bhadralok* under particular circumstances. The intrusion of the criminal courts and harsh jail sentences was seen to coincide with *bhadralok* social opinion and ideas of justice, complementing, not contradicting the colonial judicial procedure. Both Chapters Four and Five deal with these themes, and similar points are made, making use of two different varieties of literary sources, the newspapers and vernacular tracts.

### **The Themes**

Of the three broad themes in the thesis, the first concerns colonial discourse, which attempted to justify and explain the need for colonial control. This was the "rule of law", seen as imperative for holding criminal elements in check, and for the preservation of the life and property of the subject race. In order to do so it was necessary to dissect the subordinate society, and identify the criminal sections for the efficient screening of the indigenous society. Colonial administrative discourse contrasted the supposed chaos of the pre-British period with the orderliness of the "rule of law" that the British government had brought to India. The criminal courts put the offenders on trial and sentenced them to imprisonment. The jails carried out the sentences. It was the maintenance of "order" and not the "reclamation" of criminals that lay behind the awe-inspiring jail buildings. It is therefore contended by many scholars that it was the need to preserve "order" that propelled the state

to apply rigid control over the crimes that might otherwise threaten to disturb it. Hence, David Arnold, in his study of the Madras Presidency, has explored the necessity the colonial administration faced in this vital requirement for the preservation of "law and order".<sup>2</sup> He has also examined the categories of crime that the administration cracked down upon and concluded that the colonial government singled out "certain types of crime, particularly those involving collective action", as these "could jeopardize its security and capacity for control and exploitation". These "specific crimes and communities" were therefore identified as inherently "criminal" and "dangerous".<sup>3</sup>

Basudev Chatterjee has also looked at how the colonial administration sought to hold in check the endemic violence rife throughout the Lower Provinces, in a direct bid to promote the "rule of law". To do so, he has taken up for consideration the "darogah system" introduced in Bengal in the 1790s by the colonial administration.<sup>4</sup> Ranjan Chakraborty, too, has examined the problem of dacoity, but he has interpreted dacoity as a form of rural protest and thus linked to the "tension and excitement in the rural interior caused by the wholesale distortion and destruction of the traditional village society with its time-honoured agencies of social control".<sup>5</sup> An extreme position of this kind can be seen in the analysis of Ranajit Sen, who perceived acts of social protest in the simplest robbery. Zamindars and peasants alike are seen to be protesting against an alien control in the only way they knew - through armed robbery - and thus the analysis does not pay attention to the identity of the victims, their own countrymen. But the point of the identity of the dacoit is important in this study, especially in the configurations of the zamindar, his *pykes*, *amlas*, *barkandazes*, and *ryots* involved in riots and robberies in the Bengal countryside. Thus the participation of all classes in endemic dacoity, the bane of the colonial administration, has

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<sup>2</sup>David Arnold, "The Armed Police and Colonial Rule in South India, 1914-1947", Modern Asian Studies, 11: 1, 1977, pp. 101- 25.

<sup>3</sup>David Arnold, "Crime and Crime Control in Madras, 1858 - 1947", in Anand A. Yang (ed.), Crime and Criminality: Passages to Social History of British India, Tucson, 1985, pp.62-88.

<sup>4</sup>Basudev Chatterjee, "Cornwallis and the Emergence of Colonial Police", Part II, in Bengal Past and Present, no. 195, July-Dec. 1983, pp.1-11.

<sup>5</sup>Ranjan Chakraborty, "Pax Britannica and the Nature of Police Control in Bengal Rural Society: c.1800-1860", Bengal Past and Present, Vol. CV, Jan. - Dec. 1986, Parts I & II, nos 200- 201, p.103.

been amply demonstrated in the analysis. Sen's interpretation, however, that "banditry in Bengal in the eighteenth century ... satisfied double passions - class hatred and hatred against foreigners", is a loose conclusion, as the loyalties and ties within a hierarchical society are not taken into account in describing the lawlessness in the countryside.<sup>6</sup> The difficulty of enforcing law and order troubled the colonial government, but the victims were the rival zamindars, helpless ryots, or merchants. Contemporary sources handle the question of dacoity and young men turning into robbers with more dexterity, and this aspect has been examined in more detail in Chapter Three.

Ranjan Chakraborty has also addressed a different range of issues pertaining to colonial control over indigenous society. He has especially taken up questions involving the nature of the police, its connections with the colonial government, and the purpose behind its strategic placements of *thanas* (police stations) in Bengal. He, too, locates the need for redefinition and tightening of penal institutions to the galloping increase of endemic violence in the interior of Bengal, and the corresponding breakdown of the traditional apparatus of control. The "traditional perceptions" and the "new and comparatively strange codes of social, moral and legal values" were seen to be in "fundamental conflict". Both his articles are based on these assumptions and he states: "It now became all the more necessary to prevent the breakdown of 'law and order' in the countryside and thereby ensure the smooth expropriation of the available rural surplus".<sup>7</sup> A more balanced identity of the dacoits in Bengal and the possible reasons for the rash of dacoity that broke out in Bengal from the end of the eighteenth century, diminished by 1820s and revived again by the 1840s, is offered in John R. Maclane's essay, "Bengali Bandits". The analysis concludes that there was a disjunction between the exercise of colonial power, especially judicial power, and the indigenous elite, for "in Bengal the criminal law was an instrument of an alien government, not of the landed classes, and it did little to strengthen 'the mental structure of paternalism'

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<sup>6</sup>Ranajit Sen, Social Banditry in Bengal, 1757-1793, Calcutta, 1988, pp. ix-x, 25.

<sup>7</sup>Chakraborty, "Pax Britannica", pp. 78, 103.



that had been disrupted by the Permanent Settlement".<sup>8</sup>

It is this contention that the thesis will take up, question and explore more fully in Chapter One, for it seems an oversimplification, overlooking the views and attitudes reflected in the newspapers and literature of the period. However, the discussion here will concentrate on the period from the mid-nineteenth century onwards. This thesis argues that though the power of the Bengali landed elite and the *bhadralok* was hedged in by colonial legislation, there was an adequate understanding of the legal and penal institutions introduced by the colonial government: members of those classes were certainly able to wield the cumbersome judicial and penal machinery to their advantage, whether against each other or against the *ryots*. Chapter One takes up for consideration the colonial stereotypes created by the British administration's attitude towards the manipulative powers of the landed elite.

Law and order could be threatened by the criminality of certain sections of society and by the rebellions of disaffected groups. One such rebellion was stirred up by the Santals, when they rebelled in 1854-56 against the disruption of their lives and loss of lands by Hindu *mahajans* (usurer) and railway engineers, all perceived to be intruders, bent on despoiling the Santals. The rebellion was seen as an agrarian protest by Suchibrata Sen, and the uneasiness of the Santals with colonial legal and penal procedures is merely hinted at.<sup>9</sup> Yet the poems and songs that the Santals sang during the rebellion reflected the injustices and ineffectiveness of the colonial judicial and penal institutions. For example, the complete alienation of the Santals from the legal procedure is apparent from two such songs:

On Sawalik hill  
 Dato Manjhi's daughter  
 Hanged herself from a mango,  
 At Gopikander Bunglow  
 The Deputy held his court

---

<sup>8</sup> John R. Maclane, "Bengali Bandits, Police and Landlords after the Permanent Settlement", in Yang, (ed.), *Crime and Criminality*, p. 46.

<sup>9</sup> Suchibrata Sen, *The Santals of Jungle Mahals (An Agrarian History) 1793-1861*, Calcutta, 1984, pp.90-91.

And fired us with his question.

And even more evocative of the sense of injustice the Santals laboured under:

In Amrapara

In Pakur Thana

In the office of Prthi Singh

For nothing, nothing

The *hakim* (judge) tied him with a rope.<sup>10</sup>

The concern of the thesis is not with the rebellion as such, but with the *bhadralok*'s interest in the preservation of law and order and in supporting the forcible restoration of peace. This provides evidence of the initial support of the *bhadralok* for the rule of law. Yet underlying this support of the colonial government, paradoxically, was an awareness of the justness of the rebellion. Moreover, the spectacle of the imprisoned Santals evoked some feelings of sympathy. Chapters Two and Four take up the Santal rebellion in order to demonstrate these two contradictory trends.<sup>11</sup> Ironically the Santals expressed the same discontent with the colonial legal and penal institutions in their songs of rebellion that the *bhadralok* were to express in the press almost a decade later, during the "indigo rebellion". There was the same feeling of being alienated from the legal and penal process. Like the Santal song that lamented the disjuncture between the crime, its location, the identity of the criminal, and the penal system which operated on the wrong person, there were similar grievances stated by the intellectuals regarding the arbitrary operation of the criminal courts and the jails.

The thesis utilises B. B. Kling's work on the indigo rebellion,<sup>12</sup> the jointly authored English translation by Amiya Rao and B.G. Rao of the *Neel-Darpan* by Dinabandhu Mitra, the Bengali version of *Neel Darpan*,<sup>13</sup> and Ranajit Guha's critical essay on *Neel Darpan*,<sup>14</sup>

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<sup>10</sup> *Man in India*, Dec. 1945, Vol. XXV, cited by Sen, *ibid.*, Appendix V.

<sup>11</sup> Sen, *The Santals of Jungle- Mahals*, p. 19.

<sup>12</sup> B.B. Kling, *The Blue Mutiny: The Indigo Disturbances in Bengal, 1859-1862*, Philadelphia, 1966.

<sup>13</sup> Amiya Rao and B.G. Rao, *The Blue Devil: Indigo and Colonial Bengal*, with an English translation of *Neel Darpan*, Delhi, 1992.

<sup>14</sup> Ranajit Guha, "Neel Darpan: The Image of a Peasant Revolt in a Liberal Mirror", *Journal of Peasant*

to discuss the operation of the legal and penal institutions which, for the first time, made for a joint cause in the arena of miscarried justice, in relation to the bhadralok and the chhotolok alike. The trial of the Reverend Long for libel in connection with the Neel Darpan issue also produced a fresh assessment of the colonial legal and penal institutions.<sup>15</sup>

Like the courts, seen to be grappling with criminals and criminal identity, the jails, too, have been seen as a similar institution of colonial control. Anand A. Yang, taking up the prison protests against common messing in Bengal and Bihar in 1842-45, concluded that the colonial prisons do not fit Foucault's paradigm as set out in his Discipline and Punish.<sup>16</sup> Ranjan Chakraborty emphasises the use of prisons to control the rural population and enforce the rule of law. To this end the prisons became the "bastions of the colonial state". Chakraborty's analysis of the colonial prisons in an identical mould to Foucault's paradigm treats the colonial prison as a closed space with the colonial state intervening at every stage to render the convicts "docile bodies".<sup>17</sup> David Arnold, in his essay on the colonial prison, exploring diverse forms of anti-disciplinary behaviour among convicts, makes the contrary claim that the prisoners' "docile bodies" were prone to resistance, and did not readily lend themselves to a Foucaultian analysis. However, Arnold has situated the colonial prison within the "British preoccupation with the extraction of revenue and the maintenance of 'law and order'", and therefore chiefly as an institution of political control.<sup>18</sup> However, this thesis deals with the issue of prison discipline only as it helped the bhadralok form an image of the harsh discipline in the jails, a view crucial to their understanding of themselves as victims of the penal institutions.

The first chapter attempts to establish that the differential treatment meted out to

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Studies, 2:1, 1975, pp.1-46.

<sup>15</sup> Rao and Rao, The Blue Devil, p.125.

<sup>16</sup> Anand A. Yang, "Disciplining 'Natives': Prisons and Prisoners in Early Nineteenth Century India", South Asia, 10:2, 1987, pp.29-45.

<sup>17</sup> Ranjan Chakraborty, "Prison as a Lever of Social Control: Bengal 1800-1860", Bengal Past and Present, Vol. CVIII, Nos. 206 -207, 1989, p.103.

<sup>18</sup> David Arnold, "The Colonial Prison: Power, Knowledge and Penology in Nineteenth-Century India", in D. Arnold & D. Hardiman (eds.), Subaltern Studies, VIII, New Delhi, 1993, p.159, referring to Michel Foucault, Discipline and Punish: The Birth of the Prison, Harmondsworth, 1979, pp.3-5.

zamindars and "respectable" Indians in the mid-nineteenth century by the colonial power created a basis for this particular bhadralok attitude. This policy of the ruling power, occasionally even conniving at the manipulative powers of the local landed elite, was diametrically opposite regarding the general chhotolok offenders. At the same time, given the fact that the indigenous elite had their own powers of resistance against the encroachment of an alien system, initially the establishment of the "rule of law" seemed at times quite ambiguous. How deep was the level of acceptance of the alien system of justice is a question that is important, yet difficult to answer.

This analysis agrees on the whole with the prevailing interpretation of the nature of colonial control imposed in Bengal. Sandria Freitag puts her finger on the problem when she contrasts the two essentially different modes of power which came together in colonised India and their different approaches towards dacoity. The traditional power structure of the Mughals, a political system which the British inherited, had "discrete" and localised units of power, which combined coercive power with "moral authority". These discrete units, headed by "the local administrator", were "responsible for solving dacoit crimes". Therefore "the crime was not seen as any reflection on the empire's ability to rule". By contrast, the British repeatedly felt the need to launch centralised anti-dacoit police forces and viewed their inefficiency as a measure of the Raj's impotence.<sup>19</sup>

Both Jorg Fisch,<sup>20</sup> and later, Radhika Singha<sup>21</sup> have also examined this confrontation between two types of political power. But they have both concentrated on the way that the criminal law underwent changes to give better control to the British government in Bengal. While Fisch has examined the changes themselves, Singha has looked at the disjunction between the professed secularism of the East India Company's criminal law and the discrepancies in practice when it had to accommodate the beliefs and

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<sup>19</sup>Sandria Freitag, "Collective Crime and Authority in Northern India", in Yang (ed.) Crime and Criminality, pp.140-163, citing Satya Prasad Sangar, Crime and Punishment in Mughal India, Delhi, 1967, p.41.

<sup>20</sup>Jorg Fisch, Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law 1769-1817, Wiesbaden, 1983.

<sup>21</sup>Radhika Singha, "The Privilege of Taking Life: Some 'Anomalies' in the Law of Homicide in the Bengal Presidency", Indian Economic and Social History Review, 30:2, 1993, pp.181-214.

status of the high-caste Brahmins.

Chapter One suggests that there was manipulation of the legal and penal systems by the upper classes of Bengal. The landed gentry did wield "power", and "moral authority" too, as the Bengali literature implied, since they had money, and a certain amount of knowledge of the working of the colonial institutions of control. From the 1860s, with the increasing familiarity of the bhadralok with the dynamics of the institutions of power, police, courts, and jails, manipulation operated here as well: "after the 1920s many Indians had taken over the British notion of exclusive authority, but had substituted themselves at the heart of the definition".<sup>22</sup> This thesis will argue, through literary and other sources, that the beginning of such a transformation had come much earlier.

A common factor underpinning all these different analyses is the keyword "control". Control of the indigenous population by the police, a holistic definition of "crime" taken up by, and enforced through the criminal courts, and transgressors punished by the jails, are thus subjected to analysis and discussion. This preoccupation with the word "control" is because, as Freitag points out, of the necessity to evolve a new kind of state control "combining state power and the moral influence previously located within discrete communities of the Indian polity which had a far-reaching effect on the definition of crime and on the infrastructure to control it".<sup>23</sup>

In Chapter One, dealing with colonial stereotypes, there will be an attempt to see the tie-up between the clearly enunciated mode of control, and how this actually operated at the level of criminal trials, the sentences given to criminals, and the jails housing them. There will also be a closer look at the crimes perpetrated and the ambivalent attitude of the government towards some "crimes" which were supposed to reflect the social code of the subject race.

This thesis seeks to examine the colonial jails not as enclosed spaces with isolated prison populations interacting solely with the colonial administration and its Indian representatives, but as a penal institution supposedly operating on certain liberal, rational

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<sup>22</sup> Freitag, "Collective Crime and Authority", p.143.

<sup>23</sup> *Ibid.*, p.161.

principles and in full public view. The punitive discipline, work ethic, the sparse diet and meagre clothing of the prison had an allegorical force for the subject race. The symbolic as well as practical importance of the jails generated great public interest in prisons in the mid to late nineteenth century, even before the middle-class "colonising" of the jails began from the late 1890s onwards. This thesis thus argues for a significantly earlier politicisation of the jails and courts, and not just as a phenomenon of the 1890s.

### **The Second Theme**

At one level, the criminal trials which sentenced criminals to suffer punishment provided justification for the "rule of law" in the eyes of the bhadralok. At another level, the failure to convict the guilty was also noted by them. Moreover, as the criminal courts revealed the biases and prejudices of the colonial administration, and the bhadralok were increasingly on the receiving end of judicial prejudice in the criminal courts, the legal machinery became proportionately suspect in their eyes. These two combined attitudes of the bhadralok, sometimes forming a single strand of criticism, sometimes targeting one or the other of the legal and penal institutions, form the second theme of this thesis. This line of argument is explored in Chapters Two, Four, and Five. Political trials and political prisoners represented the oppressive nature of colonial rule in the late nineteenth and early twentieth centuries, for the British had recourse to the very institutions that the bhadralok discourse on illegality had wrapped around them. Thus the trials of members of the patriotic bhadralok in the criminal courts and the imprisonment of the educated elite established them immediately as martyrs in the nationalist cause.

These events followed a political course, and involved a confrontation between the educated elite and the colonial government on a number of political issues that turned on the question of legal parity between the subordinate and the superordinate classes. The middle-class representation of legal justice, assured by the secular, liberal traditions of the West, yet so difficult to secure in the colonial context, was advanced. The grievances of the chhotolok, who were the possessors of "weak spleens that burst" at the slightest hint of physical retribution, and other judicial iniquities of a similar nature, were brought within

this middle-class hegemony. This gave the demands of the bhadralok an all-class representation. The trajectory of this transformation has been explored in the second, fourth, and fifth chapters. In this context, the Ilbert Bill controversy of 1883 assumed great importance, and this thesis places it within the evolving discourse of the bhadralok who took it upon themselves to define what they considered to be the misrule of law. The controversy has attracted a variety of approaches and interpretations. Surendranath Banerjee's stand on this controversial bill gave the nationalist response to it.<sup>24</sup> S. Gopal's approach to the controversy, as part of official policy, deals with the confrontation of the colonial administration, and the nationalists who clamoured for the implementation of the bill,<sup>25</sup> while Chandrika Kaul's article explores the manner in which the Press in Britain actively attempted to intervene and influence government legislation for India.<sup>26</sup>

The thesis contextualises the main points made about the racial arrogance of the British, the legal inequality of the subordinate society, and the hardening of the nationalist approach, all brought to a head by this controversy. But in addition to this, what could not be overlooked in this connection was the pluralistic nature of the society. Thus there were tribal communities, inarticulate, ignorant about the legal language, untrained in the principles of rationality, secularism and liberalism, with a different world-view that believed implicitly in witchcraft and sorcery. Witch-murders were, therefore, held to be in the nature of a community-service by such people. At the other end of the spectrum, there were the educated bhadralok, who looked to the colonial courts for justice. The colonial administration's reaction to criminality amongst the tribals was to impose the Western secular standard of the measurement of criminality. Also, in its role as the dominant power, it could switch position to confront the upstart indigene threatening the legal and penal institutions by claiming for himself the right to be measured by the same Western secular standard. The end result was that neither group was satisfied, but bhadralok dissatisfaction

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<sup>24</sup> Surendranath Banerjee, A Nation in Making, Being the Reminiscences of Fifty Years of Public Life, London, 1927, pp.85-86.

<sup>25</sup> S. Gopal, British Policy in India, 1858-1905, Cambridge, 1965.

<sup>26</sup> Chandrika Kaul, "England and India: The Ilbert Bill, 1883: A Case-study of the Metropolitan Press", Indian Economic and Social History Review, 30:4, 1993, pp. 413-36.

took the shape of informed criticism of the law, gelling around the controversial cases the bhadralok considered showed government bias, and which surfaced sharply during the Ilbert Bill controversy.

Chapter Two uses some political and criminal trials to examine the bhadralok's approach to the problematical question of the success of the rule of law. Where they themselves were concerned, the rule of law was interpreted critically and the legal procedure was weighed carefully. This growth of the awareness of the negative side of the rule of law and the failure of the criminal courts relied extensively on the concept of "print capitalism" that informed Benedict Anderson's analysis of the communities that imagined themselves into nations. The role of the intelligentsia articulated the grievances that sections of the communities faced when confronted by a colonial administration bent upon self-preservation. Thus the exploration of the negative side of the rule of law in the press became important, especially in the colonial context.<sup>27</sup> The miscarriage of justice in the criminal courts where the bhadralok were concerned, and their jail experiences, together with a belief in jurisprudence and liberal ideas, built up a discourse that drew heavily on the colonial administration's discourse on crime, criminals, and criminality, and the modes of control and reform. In this sense the bhadralok discourse was subordinate to the mainstream emanating from the colonial administration.

The hegemonising process that attempted to speak for the rest of the society, and begun by the bhadralok, has also been a subject that has formed part of an ongoing debate. This bhadralok leadership fitted neatly into Benedict Anderson's "imagined community". Partha Chatterjee's major objection to Anderson's argument is that it co-opts all the national movements developing in the third world by fitting them into "the 'modular' forms already made available to them by Europe and Americas".<sup>28</sup> It does not, therefore, encompass the specificity of the nationalisms determined by their own cultural ethos that had emerged in Africa and Asia. These, importantly, were "posited not on an identity but rather on a

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<sup>27</sup> Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism, London, revised edition, 1991, pp. 114-16.

<sup>28</sup> Chatterjee, Nation and its Fragments, p.7. Also see Partha Chatterjee, Nationalist Thought and the Colonial World: A Derivative Discourse, London, (1986), 1993, pp.131-162.



*difference* with the 'modular' forms of the national society propagated by the modern West". Chatterjee explains the dynamics of the national movement in India in a double-layered argument by splitting the political movement into two component parts. One was the political history of the development of nationalism, the "material domain", starting formally with the beginning of the Indian National Congress in 1885, and from which point the middle classes grappled politically with colonial rule, a version which Chatterjee treats as flawed. The other, the "spiritual domain" he locates in the cultural identity of the subordinated society, where "nationalism launches its most powerful project: to fashion a 'modern' national culture that is nevertheless not Western".<sup>29</sup> It was from this uncolonised arena that the middle classes asserted their national identity.<sup>30</sup>

While this double-layered argument is a useful analytical tool to explain the dynamics of the national movement, a clear demarcation between the "material" and the "spiritual" domains in a colonised, subjugated society, is surely not possible, as the expression of each reinforced the other. At the same time, because of the critical evaluation of the same secular, liberal and rational principles being enacted in the courts with no semblance to professed theory in practice, there was a partial erosion of this acceptance of the dominant colonial discourse. The qualification, "partial", is necessary, because the bhadralok were themselves bound within the parameters of the rule of law, and could not transcend its limitations. Thus the logic of the existence of the criminal courts, the proper function of which was the trial of criminals on secular and liberal principles, ensuring free and fair justice to even the most notorious criminal, and the existence of the jails for the reformation and rehabilitation of criminals were imported concepts that turned into axiomatic truths. The political trials and political prisoners had the support and sympathy of the bhadralok by the late nineteenth century, as the general jail population had been, by dint of the Press and the bhadralok's own experiences, successfully reduced to "the other" within the hierarchical indigenous society. The bhadralok could not have anything in

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<sup>29</sup> *Ibid.*, p.6.

<sup>30</sup> For a further discussion, see Sudipta Kaviraj, *The Unhappy Consciousness: Bankimchandra Chattopadhyay and the Formation of Nationalist Discourse in India*, Delhi, 1995, pp. 107-157.

common with the strange inhabitants of colonial jails. It was because of their supposed non-involvement with the infamy attached to the criminal courts and the jails that there grew a negative identity of the bhadralok which proscribed certain forms of behaviour, and stressed the importance of others. Thus there grew up by the late nineteenth century an articulate discourse centring round the courts and the jails that included the bhadralok's own perception of themselves as non-criminal. Thus in the novel Srikanta, Saratchandra Chattopadhyay makes his central character, Srikanta, utter words of condemnation against his childhood idol, Indranath, for a criminal act. The condemnation originated in an ingrained middle-class precept: "Till now, the stealing of the fish was an adventure ... but the matter of selling fish for money ... this was thieving ... shame, shame! What was this? This was done by the convicts of jails!"<sup>31</sup> This remark also demonstrates the general notion of what constituted criminality for the bhadralok and so rendered men fit for the colonial jails.

Moreover, with the members of the bhadralok serving as recruits to the administrative posts offered by the legal and penal institutions, an ideological hegemony of the bhadralok was attempted to be established over the chhotolok, as a class that was generally incapable of dishonesty, of criminality, by virtue of the moral precepts drummed into them by their social background. How this social background operated, shaping the opinions and actions of the bhadralok, whether at all it was successful, forms a separate study, and is not taken up by this thesis.

### **The Third Theme**

The third theme flows from the second. It raises the question of the extent of the congruence of the opinions of the educated elite and the colonial discourse about the criminal elements. Did the trials in the criminal courts and the reports of the jail population and the police create a body of knowledge that was shared by the colonial administration and the bhadralok alike? The vernacular tracts and the newspapers confirm this overlapping

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<sup>31</sup> Saratchandra Chattopadhyay, "Srikanta", in Sulabh Sarat Samagri, Vol. 1, Sukumar Sen (ed.), Calcutta, (first edition 1989), 1993, p. 277.

of the colonial and bhadralok discourses on criminal categories.

The anomalies and the alienness of the criminal courts have been examined by Ranajit Guha, Gautam Bhadra, Jorg Fisch, and Radhika Singha among others. The powerful landlords had created an alternative power-structure to contend with the intrusion of the law-courts, by appointing their own overseers and bailiffs to outwit the legal system, but there was also the vast majority who, confronted by the alien legal system, could only be bewildered by it. Gautam Bhadra has explored the initial bewilderment of the rural intelligentsia, who unable to comprehend the working of the legal and penal institutions, could only ascribe the incomprehensible language, the punishments that resembled ritual sacrifices to the experiences of the known, yet incomprehensible, world of the gods.<sup>32</sup> Ranajit Guha, in "Chandra's Death", explored the legal prohibition of abortion, the community pressure exerted for the ex-communication of the pregnant woman by a hierarchically structured male-dominated village society, and the close-knit women's group that secretly tried to "save" Chandra by aborting her.<sup>33</sup>

These are the themes that run through the thesis, and have been discussed in the following chapters. However, two terms, bhadralok and chhotolok, have been frequently used to denote two basic social categories, and need further discussion here, as does the term "discourse" as used in this thesis. The definition of the term "bhadralok" has been problematic for historians, as the class eludes definition. Partha Chatterjee showed awareness of the difficulty of pinning down the class exactly to its social and cultural position.<sup>34</sup> The most comprehensive one was offered by Sumit Sarkar when he attempted to define the bhadralok not by the upper three castes, as Broomfield had done,<sup>35</sup> but by their ownership of land as a class, which precluded them from the necessity of agricultural labour, and not because it was regarded as a proscribed upper-caste norm, as suggested by

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<sup>32</sup> Gautam Bhadra, "Prak-Rammohann Yuge Companir Sashaner Prati Koyekjan Bangali Buddhijibir Monobhab", Bangla Academy Parishat Patrika, Sankhya 5, 1992.

<sup>33</sup> Ranajit Guha, "Chandra's Death", in Ranajit Guha (ed.), *Subaltern Studies*, V, Delhi, 1987, pp.135-65.

<sup>34</sup> Chatterjee, "The Nationalist Elite", Nation and its Fragments, p.36.

<sup>35</sup> J.H. Broomfield, Elite Conflict in a Plural Society: Twentieth-century Bengal, Berkeley, 1968, pp.

Broomfield. Sumit Sarkar regards the self-image of the middle classes, the *madhyabittasreni* as fairly accurate, as it placed itself as a class below that of the zamindars, but above the toilers.<sup>36</sup>

The exact location of the bhadralok as a class is not central to the thesis. What is examined is their self-image as a non-criminal class, whose honour and health were jeopardised when the legal and penal institutions impinged upon their social status. Yet despite the deep distrust of the legal process and the punitive institution when it came to themselves, the thesis examines the notion of the validity of the rule of law within the bhadralok discourse which considered certain areas within the society that called for colonial legal and penal intervention. Here lay the bhadralok's conviction about the necessity of the operation of the secular rule of law, and this basic conviction about its validity made the ambiguous position of the bhadralok take on a meaning that was tied to its class perspective.

The term "chhotolok" is even more difficult to define. A sense of the manner in which it was used by the educated bhadralok can only be obtained through literary sources, for no other sources of reference can be cited. Sumanta Banerjee has utilised the same basic division of the Bengali community into bhadralok and chhotolok for a cultural analysis.<sup>37</sup> Kalpana Bardhan, too, uses the term to locate the shift of Bengali literature of a particular genre from the "educated middle class [bhadralok] to the stark lives of the lower classes [chhotolok]".<sup>38</sup> But this is a critically used term, to denote a particular class of society as represented by literature. The same term is used by Saratchandra Chattopadhyay in his novels depicting Bengali rural society as a mode of address by the bhadralok in a derogatory manner to keep the lower classes in their place.<sup>39</sup>

This thesis, in attempting to locate the legal and penal institutions within a middle-

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<sup>36</sup> Sumit Sarkar, *Modern India, 1885-1947*, Delhi, 1983, pp. 66-69.

<sup>37</sup> Sumanta Banerjee, *The Parlour and the Street: Elite and Popular Culture in Nineteenth Century Calcutta*, Calcutta, 1989, pp.70-71.

<sup>38</sup> Kalpana Bardhan, *Of Women, Outcastes, Peasants, and Rebels : A Selection of Bengali Short Stories*. Berkeley, 1990.

<sup>39</sup> Chattopadhyay, Vol. 1, *Palli Samaj*, pp. 175-176.

class perspective, has also to contend with the bhadralok's emerging sense of an exclusive moral and political order through their articulation of a discourse of their own non-criminality. Indira Chowdhury Sengupta's thesis has dealt with the issue of an emerging discourse of a subordinate, but highly articulate, intelligentsia in Bengal. This thesis agrees with her perspective of a negotiated oppositional identity put forward by the bhadralok "informed and shaped by Hindu ideas".<sup>40</sup> At the same time, this thesis will try to demonstrate that another oppositional aspect of the bhadralok identity grew up around the courts and the jails, and sprang primarily from two basic sources: first, a resistance towards the colonial government's equating the unprivileged chhotolok with the bhadralok through these institutions; the second, more importantly, a cultural opposition to the perceived removal of the wall between the two basic social classes, again via the courts and the jails.

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<sup>40</sup> Indira Chowdhury Sengupta, "Colonialism and Cultural Identity: The Making of a Hindu Discourse, Bengal 1867 - 1905", unpublished Ph.D. thesis, SOAS, 1993, pp.11-13.

## Chapter One

### Official Discourse : The Creation of Categories

Bengal had, by the mid-eighteenth century, passed under the political control of English East India Company. But though it took a century, from 1757 to 1857, for it to consolidate its dominion, the task of recognising and meeting the administrative difficulty of controlling such a complex and hierarchical society was apparent to the colonising power from an early stage. Jorg Fisch has rightly ascribed administrative priority to the collection of revenue by the Company.<sup>1</sup> But with the important question of the collection of revenue settled in effect by the Permanent Settlement of 1793, the maintenance of law and order and the role of the criminal law became the next thorny question on the priority list of the Company as it grappled with the highly complex society it had to control.<sup>2</sup> This chapter maps out the colonial government's use of the two key institutions, the criminal courts and the jails, to identify the various social groups that might threaten to disrupt the law and order the Company was struggling to establish.

Jorg Fisch, and more recently, Radhika Singha have put forward the argument that Islamic criminal law was tightened and made more severe by European legislation in Bengal. Some of these European interventions, as Fisch points out, were made in accordance with universalist humanitarian principles, e.g., to restrict the sentences of mutilation. Yet paradoxically "the main concern was to abolish the many possibilities for escape the Islamic law contained, which meant more severity combined with more equality in punishment".<sup>3</sup> Radhika Singha has examined the gaps in this systematic tightening up of the criminal law, that took into account the previous religious immunity granted to Brahmins charged with murder. Singha also looks at the implication of the changes in the criminal law by the colonial power, despite this slow and halting progress

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<sup>1</sup>Jorg Fisch, Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769-1817, Wiesbaden, 1983, p.4.

<sup>2</sup>*Ibid.*, pp.6-7.

<sup>3</sup>*Ibid.*, p.32.

that took into consideration the prejudices and immunities of privileged sections of the indigenous elite. Thus, the criminal law was based on "novel conceptions of sovereign right being defined through the legal relationship between the colonial power and its Indian subjects".<sup>4</sup> This ideology subsumed the moral and legal rights of all other sources of authority within a segmented Indian social structure, and arrogated to itself the sole role of judicial mediator in the form of "the rule of law". Henceforth the exercise of the rule of law would be the prerogative of the state. Its devolution to other sources of authority would be defined only within and by this rule of law. Therefore, the trend was visibly towards a more rigid criminal law than Islamic law could provide, at one level, and on a deeper and more fundamental plane, the colonial power abrogated within the ideology of the rule of law the sole right of the colonial state to intervene judicially and punitively to enforce law and order in Indian society.

This insistence on the sole authority of the ruling power to establish law and order is the basis for the argument developed in this chapter. The coherence and effectiveness of the state's legal and penal institutions could be achieved only by the successful categorisation of India's hierarchical and heterogeneous society into two basic divisions, "criminal" and "non-criminal". The task of screening the criminal sections from the law-abiding population was seen to be an administrative necessity, as crime and the actual or potential criminals were politically threatening. First, they posed a threat to the law and order structure, and second, they eroded the people's faith in the ideology of the rule of law if it could not provide safety for life and property. This function was done by the police, an institution that was responsible for the immediate identification and detachment of the criminal from the civil society. David Arnold has criticised Anandswarup Gupta's analysis of colonial police control which presented the colonial police as a political device solely aimed at political domination without its true function, the protection of lives and property, being duly considered. While acknowledging the political function of the police, Arnold has conflated the identification and control of

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<sup>4</sup>Radhika Singha, "The Privilege of Taking Life: Some 'Anomalies' in the Law of Homicide in the Bengal Presidency", *Indian Economic and Social History Review*, 30:2, 1993, pp.181-82.

crime and criminals with a political function that was intrinsic to the nature of the colonial state as both were instrumental in upholding the rule of law.<sup>5</sup> But what this thesis emphasises is not this screening of the suspected criminal by the police, but the critical importance of the criminal court as the actual site of the determination of criminality. And once criminality was established in the court, the punitive function of the colonial state swung into operation, whether in the form of fines in the jail, at the whipping triangle, or on the scaffold. These legal and penal institutions constituted a public arena, where the criminals were introduced to the state and society as offenders or social aberrations, on whom it was henceforth important for the state to keep a watchful eye. Moreover, this chapter argues that such a public identification of a criminal within a three-fold procedure of administration, firstly at the police station, and then in the courts and jails, generated a huge body of information which lent itself to classification. As the colonial government attempted to locate criminality within social groups, or within geographical locations, the categories of classification multiplied. The census of 1871 made possible even more exact computations of the criminality of sections of the indigenous population as compared to the total population of the province, in terms of district, religion, caste, sex, education, or even age. (See Appendices II, III, IV, V, VI, VII, VIII).

Arnold has pointed to the priority given to certain crimes over others,<sup>6</sup> while Maclane has narrowed the field down still further to the precedence dacoity took over other kinds of crime in Bengal.<sup>7</sup> The categories of the criminally-oriented amongst the Indian population created at this juncture reached their high-point in the late nineteenth century, as pointed out by Sandria Freitag. She observes that prior to the mid nineteenth century, the colonial government's efforts at controlling crime were "localised and problem specific". Freitag's perception of the dichotomy inherent in the "crime eradication" programme - that it "was designed to detect and convict criminals efficiently,

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<sup>5</sup>David Arnold, *Police Power and Colonial Rule, Madras, 1859-1947*, Delhi, 1986, pp. 3 - 4.

<sup>6</sup>D. Arnold, "Crime and Crime Control in Madras, 1860-1947", in Anand A. Yang (ed.) *Crime and Criminality in British India*, Tuscon, 1985, p.88.

<sup>7</sup>J.R. Maclane, "Bengali Bandits, Police and Landlords after the Permanent Settlement", in *ibid.*, pp.22-47.



not to protect the innocent" - is pertinent to the argument presented in this section.<sup>8</sup> Thugi proved hard to control, even through the much-touted "approver system". Again, as Freitag observes, this was in direct congruity with the wariness with which the Indians regarded the "control" devices introduced by the colonial government.<sup>9</sup> By the 1860s there was an effort to introduce uniformity of criminal codes in an attempt to check crime. However, by the 1850s, there was growing concern with the law and order situation, which made the prospect of uniformity of criminal codes throughout the British dominions in India increasingly attractive. This argument is definitely valid for the Bengal province.

Thus the colonial administration targeted the most obvious threats to life and property in Bengal and sought to curb them in order to suppress criminality. At the same time, crimes connected with the loss of life and property, or both, made the political imperative of the colonial government sharply focused on an unambiguous criminality, which could be judged through a universalist judicial approach. Thus by the 1850s, the period under discussion, the colonial government had identified criminal behaviour, codified the types of crime that it sought to suppress,<sup>10</sup> and introduced the jails as centres of detention and punishment for any transgressor stepping outside the demarcated boundaries of order.<sup>11</sup>

The crimes considered to be a threat to peace were above all those that were an overt infringement of property rights. Other kinds of crime were considered "heinous", a blot on the administration, as well as on the Indian character, but not necessarily at odds with the enforcement of public peace. Thus murder or homicide, even in the mid 1850s, did not attract the kind of concern that dacoity, highway robbery, burglary, or even theft inspired at all levels of the colonial bureaucracy.

In Bengal, endemic dacoity was targeted by the administration. To illustrate this

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<sup>8</sup>Sandria Freitag, "Collective Crime and Authority in North India", in *ibid.*, p.147.

<sup>9</sup>*Ibid.*, pp.150 - 51.

<sup>10</sup>Percival Griffiths, *To Guard My People: The History of the Indian Police*, London, 1971, pp. 20 - 23, 53-56.

<sup>11</sup>Edmund C. Cox, *Police and Crime in India*, New Delhi, (first published, 1910), 1976, pp. 203 - 52.

concern at endemic dacoity one can cite Lord Dalhousie's minute of 1854. The Governor-General referred to the inadequacy of the criminal courts which presented "obstacles to the complete suppression of Dacoity", and thus a "better system for trying the prisoners who may be accused of this peculiar kind [of crime]" was deemed urgently necessary. The separate Dacoity Department under the charge of Mr. Jackson, which successfully ran punitive operations against dacoits, was to be continued, but with a wider organisational network. Moreover, it was hoped that the Criminal Procedure Code, which was in the offing, would be capable of supplying the deficiency in the legality of such trials. Without that extra legal leverage, the conviction rate was poor and caused officials grave disquiet as to its adequacy to combat such lawlessness.<sup>12</sup> The criminal law, as it existed and interpreted by the European judges who were reputedly "actuated by the purest motives and guided by the highest principles", allowed "numbers of notoriously guilty ruffians" to escape every year "to terrify and plunder, and prey upon the country".<sup>13</sup>

It was feared that the failure of criminal courts to convict the "notoriously guilty ruffians" who were let loose to "prey" on the countryside would undermine the prestige of the colonial government with the Indian people: "the working of our Criminal Courts ... does not command the confidence of the community, in respect of this class of violent crime".<sup>14</sup> By tightening the legal system, making the laws more stringent, conviction more certain, and sentences more severe, Dalhousie hoped to counter this erosion of authority. He felt that "dacoity in Bengal may be extirpated ... by prompt trial and certain conviction, and punishment of Dacoits, whenever found guilty". Thus, the certainty of punishment following quick trials seemed to be the answer to the daunting problem of dacoity. Dalhousie thus demonstrated the close connection between the state's legal and penal institutions, necessary to weed out the criminal elements through a closely mapped organisational network. To this end, therefore, it was necessary for "the immediate

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<sup>12</sup> Minute by Dalhousie, 6 Nov. 1854, Home Department Judicial, 18 Mar., 1859, 4-10, BJP. 1859, West Bengal State Archives, (hereafter WBSA).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

creation of a special machinery for the trial of dacoits, supplementary to the special machinery which has been devised for their apprehension". At this juncture, in 1854, the menace presented by the threatening figure of the dacoit loomed large, but that administrative control would be asserted over this lawlessness was never doubted, for it was pointed out that "Half the evil is overcome already, for we have learnt how to catch the Dacoit. We shall have overcome the other half, when we have learnt how to convict and punish them when they are really guilty".<sup>15</sup>

### **Criminal Courts and the General Population**

The effect of this clearly enunciated policy can be observed in the severe sentences that any person convicted of dacoity faced, generally after a summary trial. A close examination of the judicial records of this period for Bengal reveals a few facts about the targets of this policy of control. While it is not desirable to carry this point too far, at the same time the correlation between the large groups of people, mostly belonging to lower castes or labouring castes, brought in for trial, and sentenced, the majority belonging to the 15 to 40 age-group, is too marked to be missed. As is borne out by literary sources as well, many people from the same caste or same village were rounded up on suspicion, and males of a certain age were clearly singled out from the rest of the villagers or caste groups, as the most likely members of a gang. For instance, in November 1853, the Magistrate of Howrah sentenced three men, all from the Bagdi caste, to heavy terms of imprisonment "with hard labour and irons in banishment for sixteen years" for "dacoity and having in their possession stolen property knowing it to be such".<sup>16</sup> Again, in 24 Parganas in December 1853 there was a similar conviction of a group of low-caste Kowras, convicted for the same offence and given a similar sentence of fourteen years' imprisonment.<sup>17</sup> It is difficult from the available sources to judge if they were really

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<sup>15</sup> Ibid.

<sup>16</sup> Magistrate of Howrah, to Government of Bengal, (hereafter GOB), 12 Nov. 1853, 129, 810, Bengal Judicial Proceedings (hereafter BJP), 12 Jan. 1854, India Office Library (hereafter IOL).

<sup>17</sup> I.H. Patton, Additional Sessions Judge, to Cecil Beadon, Sec. to GOB, 24 Parganas, 6 Dec. 1853, 133, BJP, 12 Jan. 1854, IOL.

guilty. It is perhaps reasonable to assume that some were, and some were not. But the notion of criminality for which certain castes were fabled amongst the *bhadralok* of Bengal, have overlapped with the castes chiefly targeted as dacoits by the colonial administration. In Bankim Chandra's *Devi Choudhurani*,<sup>18</sup> the central female character, Prafulla, was ostracised by her in-laws as the *Bagdir beti* (daughter of a Bagdi), for her mother was accused of a loose and doubtful past. How far the colonial stereotypes actually coloured the Bengali middle-class perception of certain low castes like the Bagdis, imbuing them with criminality, or how far the Bengali perception informed colonial ideas of criminal classes is an issue that will be more fully addressed in Chapter Three.

Yet, a question arises: how far was this reputation of criminality earned by the "criminal classes"? The criminal courts, targeting certain elements of the population, sought to demonstrate to the Indian public and to the criminals themselves the efficacy of the courts, and the inevitability of punishment. In order to do so, the slippery question of evidence was evaded by the courts when it was felt necessary to hold up an example before other potential criminals. One such instance occurred in Sarun in Bihar in 1854, when three Dosads (very low caste) were brought to court on a charge of highway robbery. Since all three belonged to the same caste, and to the category of able-bodied males in the suspect age-group between 28 to 40, and also held low-caste occupations, two being *goraits* (low-castes) and the third a labourer, the summing up of the judge reflects both the declared policy as well as the bias of the colonial government towards any explicit threat to property.

The three had been guilty of waylaying their neighbour and attempting to rob him. Even though not successful, the very fact that they had attempted to do so, was sufficient to secure their conviction. The Sessions Judge's decision was particularly severe towards one of the Dosads, Monorat, who had been convicted twice before. He had been accused of burglary and theft and sentenced to five years imprisonment. He

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<sup>18</sup>Bankimchandra Chattopadhyay, "Devi Choudhurani", *Bankim Rachanasambhar*, I, Pramathanath Bishi (ed.), Calcutta, 1372 B.S., (1965), pp. 443 - 446, 482, 566.

was subsequently recommitted for cattle-stealing and sentenced to three years imprisonment. He was therefore treated as a "habitual" by the Judge and sentenced "to fourteen years imprisonment in banishment with labour in irons", on the grounds of the "utter insecurity of property from the depredations of people of this class".<sup>19</sup> The other two received sentences of three and five years; all were committed "on full legal proof" and their intent to rob was established by the Judge who declared: "From the way in which the Plaintiff is described as having been handled by the Defendants it is clear that they searched for money on his person and which would have been secured if there had been any on him." Therefore, "intent", as proved by the testimony of witnesses and of the plaintiff was capable of securing heavy sentences in order to establish effective law and order in the countryside. The Judge was equally conscious of the exemplary nature of the sentence he had meted out as he acknowledged that the plaintiff was not mistreated by the defendants, yet he insisted that "the crime committed is not the less robbery by open violence". The infrequency of complaints from travellers "when robbed of property of a small amount" made it incumbent on the judge to make "a severe example ... in all cases successfully prosecuted".<sup>20</sup>

This and similar judgements of the period clearly indicated that the colonial government had already initiated the process in the criminal courts which had identified the "habitual criminal" with the low caste/low income groups, and dealt out stiff sentences accordingly, thus making it clear that the courts as institutions of control would be brought to bear fully on this section of the populace. But while the criminal classes' existence was thus established by the colonial administration, especially by the police and the criminal courts, the problem of criminality and control was seen to permeate the entire rural society, and it was therefore difficult to locate the criminal classes within the highly segmented and stratified society of Bengal with any degree of certainty. Though this was felt to be an India-wide concern, Bengal was seen to exemplify the most extreme form of

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<sup>19</sup>G. Richardson, Magistrate of Sarun, to H. Pratt, Under Sec. to GOB, 11 May, 1854, Chapra, 6, para.95, BJP, 20 Jul. 1854, IOL.

<sup>20</sup>H. Allerton, Sessions Judge, to Sec. to GOB, 15 Apr. 1854, Sarun, 6, paras. 99, 185, BJP, 20 Jul. 1854, IOL.

the problem. Thus the districts that had a high level of dacoities were targeted by the Dacoity Commissioner, especially from the mid- 1850s. By the 1860s, the administration had penetrated the countryside to effect a better categorisation and control of the criminal sections of society. The special department for the suppression of Thugi and Dacoity was the chief instrument by which this task was accomplished. Thus, G. Plowden, the Commissioner of Burdwan, could claim in 1862 a reduction of 89 cases by 1860, as there were a mere 152 cases as compared to 241 cases in 1857. He could further pinpoint decreases of dacoity cases in the districts which were considered to be dacoit-infested. Thus the districts of Burdwan, Nadia and Jessore registered a fall in the dacoity cases, with the only exceptions to this decline being Midnapur and Balasore.<sup>21</sup> Identification of dacoity by districts continued as a policy into 1861, and eight more districts were added to the notorious dacoit-infested districts of Burdwan, Nadia, Jessore, Bancura, Midnapur and others.<sup>22</sup>(Appendix III).

Along with the geographical location of such dacoit-infested areas, the colonial government also came to certain conclusions about the identification of the dacoits themselves. The identity of these dacoits differed in caste configurations from district to district, but allowed for some generalisations. Thus, the Gowalas in the Hooghly district,<sup>23</sup> and the Bedgas (or Bedyas) in Nadia appeared regularly before the Dacoity Commissioner, initially as dacoits, and then as burglars, thereby confirming their criminal reputation in the official records. (Appendices IV, V). This simple transition was effected merely through the breaking up of the gangs of twenty or more into smaller groups of twos and threes, in order to by-pass the Indian Penal Code's definition of dacoity as being perpetrated by five people or more.<sup>24</sup> But while the involvement of the

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<sup>21</sup> G. Plowden, Commissioner of Burdwan, to Sec. to GOB, 15 Jan. 1862, in "Annual Report on the Suppression of Dacoity in Bengal, 1860", (henceforth ARSDB), Calcutta, 1862, p.2, IOL.

<sup>22</sup> Idem to Sec. to GOB, 8 Sept. 1862, ARSDB for 1861 and 1862, G. Plowden, Bengal Secretariat Office, 1863, p. 2, IOL. These were Rangpur, Bogra, Dinajpur, Purnia, Sylhet, Chittagong, Tipperah and Noakhali.

<sup>23</sup> Commissioner for the Suppression of Dacoity, Hooghly, to Sec. to GOB, 28 Oct. 1853, 58-78, BJP, 16 Mar. 1854, IOL.

<sup>24</sup> ARSDB for 1861-1862, p.4, IOL.

lower castes as the criminal classes was considered a fact, J.H.Reilly, the Dacoity Commissioner did not doubt in 1862 the far more widespread involvement of the rural population in the commissions of dacoities, which rendered the task of the complete suppression of dacoity difficult. As he remarked: "dacoity in this country is not confined to particular *Tribes* or *Classes*; but its recruits are raised from the *entire rural population* where every village has its band of Budmashes or bad characters ready at all times to take part in an affray or other illegal act ..." <sup>25</sup> (Italics in original)

Reilly was of the opinion that "mild and equitable laws" which offered the criminals many loopholes for escape from the courts actually "indirectly encourage Criminals". In illustration of this statement, he declared that a river dacoit called Ramkanai Das, arrested in the Backerganj district, had told him that "his gang looked upon the '*Poytalish Aeen*' or Penal Code as the greatest boon conferred upon dacoits" as it deprived the police of the power to detain a prisoner beyond twenty-four hours, or even to torture him. The criminal law, therefore needed to be more rigid and arbitrary in its operation.<sup>26</sup> Moreover, judges had to sentence all the criminals ear-marked by the Dacoity Department to either transportation or imprisonment for life, without considering issues like conflicting evidence of the approvers, which, if considered, rendered acquittal of the criminals a fair certainty.<sup>27</sup>

Thus Reilly's emphasis on the close connection between the criminal courts giving strong sentences to the criminals, and the punitive machinery of the state ensuring the safe disposal of the criminals, demonstrates the operation of the two institutions to control the criminal sections of the indigenous society. Even though the Thugi and Dacoity Department was abolished by a Resolution of 1863, as it was considered too expensive, the categories of high crime-level districts and low crime-level districts were retained as administrative conveniences and the Magistrates of ear-marked districts like

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<sup>25</sup> J.H.Reilly, Dacoity Commissioner of Bengal, to Commissioner of Circuit, Burdwan Division, Hooghly, 22 Apr. 1862, ARSDB 1861 & 1862, p.13.

<sup>26</sup> *Idem*, to Commissioner of Circuit, Burdwan Division, Hooghly, 2 Apr. 1863, ARSDB, 1863, p.9.

<sup>27</sup> *Idem*, to the Commissioner of the Circuit, Burdwan Division, Hooghly, 22 Apr. 1862, ARSDB, 1861-62, pp.9-12.

24-Parganas, Jessore, Murshidabad, Midnapur and Nadia were asked to keep their crime levels under check, as "so much violent crime ... is not favorable to the character of their Police administration".<sup>28</sup> By the 1870s, some of these districts had armed themselves with small local detective departments, like, for instance, the detective department in Midnapur which kept a close watch on the criminal elements in the district. These were often stirred into activity by the release of jail prisoners: "we received distinct warning from our detective department that dacoity would recommence, as three or four more bands had formed, chiefly by the aid of old dacoits, recently discharged from jail after having served out their sentence ..."<sup>29</sup> These areas of heavy concentrations of dacoity were thus made identifiable by the devices created by the 1860s for the apprehension, trials, and the recording of the particulars of these dacoits in the prisons. As the dacoities dwindled in the once dacoit-infested districts, the administration by 1875 could congratulate itself on having successfully established control over the Bengali countryside: "this serious crime is being intelligently, vigorously and effectively handled by the Magistrates throughout the division".<sup>30</sup> But there was a recognition of the fact that suppression of dacoity would only mean a comparative increase in another category of crimes - burglary.

Other crimes against property - burglary, theft, receiving stolen property, cheating - also received the attention of the Government of Bengal, but regarding these crimes the Magistrates were more lenient in passing sentences. There was a perceptible link between the heavy concentration of the numbers of prisoners in Monghyr, 24-Parganas and Jessore,<sup>31</sup> and the areas where the operations of the Dacoity Commission were concentrated.<sup>32</sup> A record of previous conviction was bound to influence the rigour

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<sup>28</sup> Resolution by Lieutenant-Governor, Judicial, Fort William, 1 July, 1863, ARSDB, 1861-62.

<sup>29</sup> Statements of the Crimes of Dacoity and Poisoning in British Territory for the years 1874-75, Major E.R.C. Bradford, General Superintendent of Operations for the Suppression of Thugi and Dacoity, Simla, 1877, ARSDB, 1861-1862, p.8, IOL.

<sup>30</sup> *Ibid.*, p.7.

<sup>31</sup> *Ibid.*, Half-Yearly Statements of Criminal and Civil Prisoners in the Jails of the several Regulation and Extra Regulation Districts under the GOB, 1854, pp.2-3.

<sup>32</sup> G. Plowden, Commissioner of Burdwan, to GOB, Burdwan, 15 Jan., 1862, ARSDB, 1860, p.2, IOL.



of the sentence, for then the criminal was regarded as a habitual and given a long prison sentence, but the attitude towards first-time offenders very often revealed a more flexible policy. This can be seen in Cuttack, in 1854, in the case of Monorat Dosad, who received a long prison sentence because of his previous convictions. For him, the graduation from a thief and a burglar to a highway robber had been remarkably easy. Without even a monetary gain to leaven the quick transition, the only visible sign of his seniority amongst the ranks of criminals was an enhanced jail sentence. Any person suspected of repeated crimes, therefore, if convicted, could expect heavy sentences. Thus in Cuttack, for a theft of 4 rupees, 12 annas and 9 pice, and for "knowingly receiving stolen property", a *Tanti* (a weaver), was given fourteen years' imprisonment with labour and irons, in banishment.<sup>33</sup> In Noakhali and Tippera six gangs were apprehended and charged with dacoity. The gangs consisted of low-caste Hindus, like Bagdis, Kaoras and Doms, as well as Muslims. The sentences of imprisonment passed on them varied from seven to sixteen years of labour and irons in banishment.<sup>34</sup> The Judge of Burdwan sentenced another prisoner to seven years' imprisonment with labour for being involved in a case of "highway robbery with wounding", a charge which was "fully proved in the Mofussil".<sup>35</sup>

Harsh judicial decisions following the infringement of property rights can therefore be said to be a general pattern. The unbending legal severity demonstrated this attitude of the colonial government. An old Muslim of seventy-five was accused of perjury and sentenced to three years' imprisonment, though without labour and irons. It was thought that he would not survive three years of prison, and the Medical Officer as well as the Civil Assistant Surgeon testified to the fact that the prisoner was old and feeble, and had "completely lost his eyesight". But even in the face of such irrefutable medical proof of the man's unfitness to serve a prison sentence, the government

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<sup>33</sup>F. Gouldsburg, Commissioner of Circuit, Cuttack Division, to GOB, 27 Feb. 1854, 103, BJP, 5 Oct. 1854. IOL. Also see *idem*, to GOB, 10 Oct. 1854, 105, BJP, 5 Oct. 1854, IOL.

<sup>34</sup>Superintendent of Police, 16 Division, to Sec. to GOB, Chittagong, 19 Jan. 1854, 87, 23, BJP, 23 Feb. 1854. IOL.

<sup>35</sup>Additional Sessions Judge of East Burdwan, to GOB, 1 Mar. 1854, 111 - 112, BJP, 23 Mar. 1854, IOL.

remained adamant, and did not consider him to be a "fit object of release".<sup>36</sup> A Hindu of the Bagdi caste, aged 65 years, was given a similar 16 year sentence with labour for dacoity.<sup>37</sup> Even when the prisoner's eyesight failed, there was no reprieve for him from the Government of Bengal, even though the medical officer and the surgeon, together with the magistrate, testified to the man's infirmity.<sup>38</sup> However, as observed before, generally such old men were rather exceptional: the legal net usually aimed at the able-bodied and young as the most likely perpetrators of violent crime, rather than someone handicapped by age.

On the other hand, there were displays of leniency as well. A five-year-old boy was held to be too young to be accountable for the death of his playmate, and the case was dismissed by the Commissioner.<sup>39</sup> In another peculiar case, where some sepoy and "mahouts" got involved in a fracas over fodder for their elephants with the residents of a village in East Burdwan, with a man dying of a head-wound, the judgement delivered was lenient, with the two chief rioters receiving two years' imprisonment without labour and irons. Two others, held to be less culpable, just received a year of imprisonment each. Only one man was sentenced to three years' imprisonment.<sup>40</sup> Therefore the assessment of the degree of criminality exhibited by the prisoners in the criminal courts and the concomitant sentences perhaps depended on the individual preference of the judge delivering sentence. Thus, there is a noticeable shift in policy regarding the bureaucratic attitude towards crime which did not involve any overt or covert infringement of property rights. At the same time, the attitudes and assumptions

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<sup>36</sup> S. Bowring, Sessions Judge of Dacca, to H. Pratt, Under Sec. to GOB, 23 Aug. 1854, 533, BJP, 5 Oct. 1854. Also see H. Pratt, Under Sec. to GOB, to Judge of Dacca, 2 Oct. 1854, 2361, BJP, 5 Oct. 1854, IOL.

<sup>37</sup> A.W. Abercrombie, Additional Sessions Judge, to A. Pigou, Magistrate of East Burdwan, 1 Mar. 1854, 112, BJP, 23 Mar. 1854, IOL.

<sup>38</sup> H. Pratt, U. Sec. to GOB, to Sessions Judge of E. Burdwan, Calcutta, 17 Mar. 1854, 113, BJP, 23 Mar. 1854, IOL.

<sup>39</sup> Commissioner of Circuit, 16 Division, to Sec. to GOB, 13 Mar. 1854, 143, para. 5, BJP, 4 Jan. 1855, IOL.

<sup>40</sup> I.H. Patton, Offg Additional Sessions Judge, to H. Pratt, 12 Dec. 1853, East Burdwan, 107, BJP, 12 Jan. 1854, IOL. Also, Registrar of the Nizamut Adalat, to C. Beadon, Sec. to GOB, 10 Dec. 1853, 107, 1406, BJP, 12 Jan. 1854, IOL.

underlying the judgements no doubt also reflected the underlying rationale along the lines laid down by Dalhousie.

### **The Colonial Law and the Zamindars**

The involvement of the zamindars in the criminal activities of the districts was acknowledged by the colonial administration. Apprehended bands gave the police much useful information regarding the interdependent relationship of these gangs and "the petty Rajahs", who "supplied them with arms and always sent 2 or 3 men with them to receive their share of the plunder". Official opinion regarded these disclosures about the zamindars' complicity as "substantially true".<sup>41</sup>

There was some attempt to bring the "criminal" zamindars to justice, and a number of zamindars were put in the dock during the 1850s and 1860s. The colonial regime had to find some method of checking the zamindars' illegal activities, especially through help from bands of "thugs", as the instance mentioned showed. Thus the officials pondered the difficulties of ascertaining the degree of criminality of a zamindar, who would employ *lathials* (men trained to fight with a staff) in his pay, or even set his hired henchmen to loot and plunder, yet keep himself legally in the clear. The government felt that it was essential to hold the instigator of a crime to be as culpable as the actual perpetrator of it, thereby checkmating the illegalities of a zamindar. The *lathials* employed by the zamindar in an affray, it was held, had no "object to gain in the dispute", while the zamindar's interest in it could be proved by "presumptive evidence". Without such checks on the criminality of the zamindars, the consequences of the crime were borne by the *lathials* alone.<sup>42</sup>

The bureaucracy was, therefore, fully aware of the value of the "evidence" presented by a zamindar in a court of law. The flagrant violation of the law by the more powerful zamindars, formed the backdrop against which they conducted war in the

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<sup>41</sup> Annual Jail Report, Bengal, (henceforth AJRB), 1868, Statement A, Calcutta, 1869, p.cxlvi. Also see ARSDB, 1861- 62, para. 94, p.24, IOL.

<sup>42</sup> AJRB, 1868, Statement A, p.cxlvi. Also see ARSDB, 1861-62, para. 94, p.24, IOL.

*faujdari* (criminal) courts - arranging *faujdari* cases against their enemies, taking full part in "criminal affrays", and occasionally falling foul of the law. In 1854, for instance, a Muslim taluqdar was jailed for "ten years with labour and irons" for being the leader of "a band of dacoits", and for committing dacoity. Not just this; he was also arraigned for being an "accessory to the Dacoitee before or after the fact", and also for "receiving and keeping stolen goods".<sup>43</sup>

The government's efforts to keep the zamindars under control dated at least from the 1840s, and thus indicated a tussle of long-standing between the indigenous elite and the alien bureaucracy, the former using the new labyrinths of control with a degree of expertise the government found difficult to counter. There were therefore, a series of laws to curtail the zamindar's unlawful activities. By the provisions of Act IV, 1840, and Act V of 1848, parties were bound over under recognisance to "keep the peace". This entailed the payment of large sums of money to the government. Leading zamindars, especially were required to pay. In case of failure to keep the peace, the zamindar stood to lose a vast sum of money. Joykrishna Mukherjee of Uttarpara was one zamindar who, because of factional rivalries, had a great deal to do with the *faujdari* courts, and was therefore singled out by the government under this act to pay a big security - a minimum of Rs. 500. Others like the Seal merchants of Calcutta, with landed property, were also similarly bound over by the government.<sup>44</sup>

Apart from this strategy, there was also increasing awareness on the part of the ruling power that "evidence" was worthless in the criminal courts, and the government discussed the exigency of including "presumptive evidence" in addition to "direct testimony" which would make the punishment of "instigators" certain. The official observation - "it is notorious that the Latteeals [*lathials*] are the Dacoits" can therefore be contextualised within the government's cognoscence of the role played by the zamindars

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<sup>43</sup>Judge of Dacca, to GOB, 24 Oct., 1854, Abstract statement of the prisoner, 79, 6, BJP, 21 Dec. 1854, IOL.

<sup>44</sup>W. Gordon Young, Under Sec. to GOB, to Judicial Department for Information and Guidance, Extract from Proceeding of GOB, General Department, 16 Feb, 1854, 86 &87, citing from Mr. Welby Jackson's Report on the District of Hooghly and Murshidabad, 9 Mar, 1854, 319, BJP, 16 Jul. 1854, IOL.

in the Bengal countryside. Legislation arising out of the need to curb the zamindar's ability to foment crime in the countryside thus stipulated that conviction could be obtained merely on the approver's testimony, and also that to be caught with a "gang of dacoits" would be sufficient proof to be considered a member of a "dacoit band".<sup>45</sup>

At the same time, it must be observed that the colonial government did leave the zamindars a certain amount of operational space: what emerges from contemporary literature is not a picture of landowners completely immobilised by colonial legislation. This is also borne out by judicial records. The colonial government, moreover, sided occasionally with the indigenous elite as "respectable" landowners or high castes with financial clout. Such support usually came from the higher echelons of the bureaucracy, while the district magistrates, well aware of the nefarious activities of the zamindars, resented such intervention from their official superiors. In a typical example, W. Brown, the Deputy Magistrate of Balasore in the Cuttack district (part of the Bengal Presidency during the 1850s), complained to the Sessions Judge of Balasore for having acquitted a zamindar called Jimmonjoy Dass, more popularly known as Rajaram Bahabulinder. Brown had committed Dass to the Sessions, charging him as the leader of a "gang of dacoits", and of committing "highway robbery with wounding".<sup>46</sup> He had Rajaram identified by no less than fifteen eye-witnesses who had seen the zamindar directing his gang at the scene of the robbery. During the trial of the land-owner, however, the Sessions Judge felt that the alibi produced by Rajaram was irrefutable.<sup>47</sup> As a result, Rajaram and his party were acquitted, much to Brown's disapproval, as his personal knowledge of the activities of the "most unscrupulous scoundrels in the District" made him resent such interference. Dass and his men had been responsible for cutting their neighbour's corn, and unashamed plunder. The acquittal of such a desperate character because of his character as a "respectable zamindar" by the Sessions Judge spelled "terror

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<sup>45</sup> Government of Bengal Resolution, 16 Feb. 1854, BJP, 1854, IOL.

<sup>46</sup> Superintendent of Police, Cuttack Division, to Sec. to GOB, Cuttack, 3 Mar. 1853, 35, BJP, 20 Jul. 1854. Also Magistrate of Balasore, to Superintendent of Police, 16 Feb. 1853, Cuttack, 14 - 17, 19, BJP, 20 Jul. 1854, IOL.

<sup>47</sup> Registrar of Nizamut Adalat to Cecil Beadon, Sec. to GOB, 12 Dec. 1853, 255-256, 1401, BJP, 20 Jul. 1854, IOL (citing the remarks of the Sessions Judge on the Raja's trial).

and disorganisation" to the district.<sup>48</sup>

In another very different situation, the complicity in a riot by the Hindu zamindar, Ganesh Dutt, of Bhagalpur district, together with a rich merchant, Lalljee Sahoo, had been proved. The Sessions Judge, again, was lenient and showed consideration to the two men of status. Thus even though the two had incited 200 Moochees (leather-workers, a very low caste), by supplying them surreptitiously with liquor to attack a mosque, in retaliation for a similar act of the Muslims, the Judge deferred to the well-established reputation of the merchant, Lalljee Sahoo. When both the zamindar and the merchant were brought to trial, which rapidly gained quite a reputation as the "*Hindoo-Mussalman ka Moocuduma*", the judge offered an open alternative to imprisonment to Lalljee Sahoo by asking him to pay a fine of a thousand rupees as he was "one of the principal and most influential persons in ... town", and thereby saved him the "from the pollution of a Jail" and the rigour of a year's prison sentence with labour. However, along with the fine in lieu of imprisonment he was also to pay a fine of Rs. 300 as compensation to the injured party. Gopal Dutt, the zamindar, as a man of "ill-repute" received no such marked favour; but at the same time his sentence of six months of imprisonment with labour, the labour commutable with a fine of a hundred rupees, was not severe.<sup>49</sup>

Agrarian riots were seen to be a part of rural life; nothing especially criminal was observed about them. Even murders in such clashes were not treated with severity. The zamindars were the prime movers in this category of rural restlessness. Crop-cutting and rent collection were the two events in the agrarian calendar which caused a lot of bloodshed and crime: but the zamindars proved adept at manoeuvring the legal and penal apparatus to their advantage. To cite an illustrative incident, a zamindar of Buckergunge had one of his leading ryots murdered over rent-collection when the ryots had assembled

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<sup>48</sup> W. Brown, Deputy Magistrate of Balasore, to W.I. Allen, Magistrate of Balasore, 4 Feb. 1853, 17, BJP, 20 Jul. 1854, IOL.

<sup>49</sup> A.T. Lingham, Attorney at Law, on behalf of the *Darogah* dismissed for inefficiency, to GOB, 8 Jan. 1855, 48 & 49, citing the incident, BJP, 25 Jan. 1855, IOL.

in the *cutcherry* to protest against the imposition of excess rent.<sup>50</sup> At the same time he had planned for his absence from the scene of the murder by arranging for a trifling rent-suit to be brought against him in the civil court, the hearing of which would need his presence. He then informed the police that the ryots had attacked the *cutcherry* and his men had defended it against the rioters, during which one of the ryots had been killed. Seventeen ryots were hauled off to jail to await judgement. Initially, it seemed as if the zamindar's machinations would win, for the Sessions Judge had held the ryots guilty under the charge of "affray with wounding and homicide". However, on the representation of the Registrar, who declared the case to be "grossly misrepresented" by the zamindar to suit his own interests, the case was reconsidered, the wildly contradictory evidence weighed afresh, and the prisoners were acquitted.<sup>51</sup> In yet another case, a taluqdar shot a man who had been sent by his master to free the cattle which the taluqdar had detained for feeding on his crop. The taluqdar was tried and found "not guilty" by the Sessions Judge of Noakhali and released.<sup>52</sup>

Even in the 1860s the figure of the zamindar was powerful. In spite of the tightening of the administration, the colonial bureaucracy, since the rebellion of 1857, found it difficult to contend with the zamindar. Beames in his Memoirs recalled the battle he had waged against a powerful and rich zamindar called Jaynarayan Singh of Purnea. The zamindar's brother had a warrant for his arrest for debt, but Jaynarayan defied the government to do its worst. When the government servants tried to force the issue by arriving in a body to forcibly remove Udaynarayan, the zamindar and his brother, armed with rifles, rode out on elephants, with a crowd of retainers who forcibly seized the warrant from the peons, "stuck it on top of a spear, and carried it off in triumph". Aware of the different jurisdictions of the magistrates over specific districts, Jaynarayan took his brother "Uday away out of the Collector's jurisdiction" and apprised Beames of the

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<sup>50</sup> Registrar of Nizamut Adalat, to Cecil Beadon, Sec. to GOB, 21 Nov. 1854, 73, 1285, BJP, 19 Jan. 1854, IOL.

<sup>51</sup> Commissioner of Circuit, 16 Division, to Sec. to GOB, 20 May 1854, 225, 148, para. 52, BJP 4 Jan. 1855, IOL.

<sup>52</sup> Ibid., para. 50, IOL.

event.<sup>53</sup>

This incident shows that in the mid-nineteenth century the zamindars were still forces to be reckoned with in the countryside. But this local authority was being increasingly contested by the colonial administration, represented by Beames and others of his ilk. Jaynarayan considered himself to be above the law and therefore not only did he spirit his brother away before the armed government forces, but also arrived personally to get bail for two of his retainers. Beames, however, did not consider him above the law. He recalled: "The old gentleman said that he had only just heard that two of his servants had been arrested and as he was in a position to prove that they were both perfectly innocent he begged that they might be released on bail".<sup>54</sup> Beames promptly had him arrested and Jaynarayan was "led off into the prisoners' tent and had to remain there about a month, during which time he marched handcuffed along with the other prisoners day by day as the camp moved through the district". Later, Jaynarayan was tried and given two years' imprisonment with hard labour. Even in a "single loin-cloth hoeing cabbages in the jail garden", Jaynarayan proved indomitable. Though far removed from his customary attire of "cloth of gold and cashmere shawl", and surrounded by the four walls of a jail, he openly challenged Beames' ability to keep him for long inside the prison. Confident in his manipulative powers, "he ... would look up with a laugh" and ask, "has order for my release come yet?" Beames' reply in the negative did not make him doubt the order of release from above, at least verbally: "All right, it will come soon". Events justified Jaynarayan's faith, for the order of release did materialise, and though the Sessions Court turned down his appeal, the High Court did not, much to Beames' displeasure and he commented: "The High Court fastened on a minor point in the evidence, misunderstood the rest; was led by a clever barrister who ingeniously distorted the whole case ... and finally ... directed his release".<sup>55</sup>

This was not Beames' only encounter with powerful zamindars who, even when

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<sup>53</sup> John Beames, Memoirs of a Bengal Civilian, London, 1961, p. 152.

<sup>54</sup> Ibid., p.153.

<sup>55</sup> Ibid., pp.153-54.



faced with prison sentences, refused to change their challenging attitude to another and superior "control system". In Champaran, a zamindar called Sheopraakash actually "maintained and protected a large gang of Magahya [Maghiya] Doms, a low-caste, wandering gipsy-race, who live by fortune-telling and thieving. He was said to organise dacoities which were carried out by his Doms, from whom he received a fourth of his spoils". Since Beames felt that it was useless "merely to put into Jail a few Magahya Doms, so long as the head and leader of the band was at large and at liberty to hire fresh ruffians to fill their place" he aimed at Sheopraakash himself. The latter was jailed, and his bail was deliberately set high, and so Sheopraakash had to remain in jail till his case came up for trial. Like W. Brown of Cuttack, Beames also faced government interference from Sir William Grey. He caustically remarked that Grey was "a man whose career had been spent entirely in the Secretariat, and who consequently had no knowledge of or power of sympathising with a District Officer's troubles and difficulties".<sup>56</sup> Moreover, the news of Sheopraakash's confinement in jail was published in an "anti-official Calcutta newspaper", Indian Daily News, where Sheopraakash was cast as an "aged nobleman, torn from the comforts of his rank and station, rotting in a felon's jail ...."<sup>57</sup> Beames was caught in a storm of controversy. Also, his failure to produce witnesses for the trial, as Sheopraakash had either "spirited" or "bribed" them away, resulted in the case falling flat.

The fact that the zamindars managed to hold their own against the inroads of colonial power and were forces to be reckoned with even as late as the 1920s can be seen from the views of Sir Cecil Walsh in 1929. The zamindars were still seen to instigate crime by hiring men, who, as their "men", dared not refuse to carry out their wishes. Thus it was "one of the most painful duties of a judge who has to administer the criminal law in India to be compelled from time to time to award or confirm death sentences when he knows the real principles to be escaping and also who that principal is".<sup>58</sup> The statement is remarkable, since it seems as though the gap of sixty years did not exist. At

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<sup>56</sup> Ibid., p.184.

<sup>57</sup> Ibid., p.185.

<sup>58</sup> Cecil Walsh, Crime in India, London, 1930, p.158.

the same time, it must be noted that the zamindars could be and were touched by the law, and given jail sentences, a fact that was demonstrated repeatedly. But the colonial government, despite its ideological insistence on retaining on its side the sole juridical authority, and the power to punish all wrongdoers regardless of class and caste privileges, often had to concede ground to the landholders.

### **Judicial Process and Local Requirements**

Only if such riots escalated and threatened the authority of the government or of interests closely linked with that of the government (e.g., planter's complaints in courts) then control would be asserted. Because the government's interests were closely bound up with such vested groups, the colonial legal and penal institutions operated in close conjunction with them for mutual advantage and benefit. The bhadralok perceived this blind spot of the colonial government by the early 1860s. This awareness did not just "happen" during the course of open rebellion in the late 1850s and early 1860s. The countryside felt the weight of the control apparatus from a fairly early date. In the early 1850s there were a number of such instances where the ryots clashed with a planter or his minions in the law courts and were worsted in the encounter. The link between the control machinery and the colonial rule became clearly visible to the bhadralok during the indigo agitation. Thus the challenge to the government came through a close analysis of injustice to the subject race through the institutions of justice at this juncture.

An instance of a typical case in Pabna, a district which was convulsed at a slightly later period, will illustrate this point well. A family of Sandyuhs had resisted an indigo planter's attempts to take over certain villages for indigo cultivation, an act of defiance for which the entire family had been killed by the planter's *burkundaz* (armed retainer). The matter might have ended there but a man of means, Gopal Lahoorie, "engaged in service" and who had "previously been ... quite a respectable character", decided to protest. With a party of nine men he raided the *burkundaz's* house in the middle of the night, carried him off, and took him to the *thana* the next morning and "complained falsely that he [the *burkundaz*] and the others had attacked their houses in the night and

that they had seized him while retreating with his friends". This recourse to police aid backfired, and criminal proceedings were set in motion against the chief culprit, Gopal Lahoorie and his assistants. There were some doubts about the nature of the crime, but Gopal Lahoorie's guilt was clear to the magistrate:

The degree of criminality falls little short of dacoity; and the case would have been classed in that category, had it not appeared probable that the motive was rather personal towards Mizam [the *burkundaz*] than a desire of plunder.<sup>59</sup>

Gopal Lahoorie escaped, but his property was impounded,<sup>60</sup> listed as "cutcha houses and brass plates etc valued at approximately Rs. 49, 6 annas and 3 pice", by the government, and his companions were all given light sentences of imprisonment for "riotously attacking the house of the prosecutor and assaulting and carrying him off".<sup>61</sup>

Bodily hurt too, had a different prefigurement in a changed context. Thus, when bodily hurt accompanied robbery or theft or burglary, the offence was compounded and assumed serious proportions if death occurred. When "bodily hurt", even "grievous bodily hurt", accompanied by death, occurred in agrarian riots, in affrays, in communal riots, where there was loss of life, but without any challenge to the government authority, the sentences passed were relatively mild. There were exceptions to the rule, but by and large, the judges looked at such crime in a social perspective, and generally looked for extenuating circumstances which led to the crime, and did not find the prisoner a criminal for having been guilty for the death of a person.

To illustrate this point, a few cases of "assault with homicide" will be examined. In these crimes the judges looked for "motives", and when they found none, as happened too often, they were completely baffled. Domestic violence, resulting in the murder of a wife, had a reason, since it was frequently claimed by the prisoner that his wife was an

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<sup>59</sup>J.Davis, Joint Magistrate of Pabna, to H.Pratt, U. Sec. to GOB, 27 Dec. 1853, 60, BJP, 12 Jan. 1854, IOL.

<sup>60</sup>H. Pratt, U. Sec. to GOB, to Joint Magistrate, Pabna, 20 Dec. 1853, 2477, 12 Jan. 1854, and Joint Magistrate of Pabna, to H. Pratt, U. Sec. to GOB, 6 Dec. 1853, 58 - 60, BJP, 12 Jan. 1854, IOL.

<sup>61</sup>Ibid.

adulteress, and hence he had killed her. Sometimes, when even that excuse was not produced and only ungovernable rage was the only "motive" for murder, the sentences of imprisonment were light, and the murders were ascribed to the Indian's "disregard for life" and the "low value" placed on it, and occasionally even to insanity. Thus a man was acquitted on the grounds of insanity for murdering his employers without provocation, while they lay asleep at night.<sup>62</sup> The sentence for having axed a man to death while disputing over the right to dig a patch of land was a year's imprisonment with labour and irons.<sup>63</sup> There were constant allusions to different values in England, holding her place amongst the "civilised countries" where murder had a motive, unlike the society where the applications of such values would be a fruitless exercise, and Cox wrote in 1910,

Again and again I have been struck with the extraordinarily slight value that is attached to human life in the East, and to the trivial motives for which death is caused.<sup>64</sup>

There are numerous examples of such murders, especially those of wives, and the verdicts of the criminal courts on the criminality of the prisoner was not as definite and precise as those accompanying the crimes of dacoity or other analogous crimes. The "private" and "domestic" aspect of these offences, ranging from murder and rape to abduction, were accepted largely at the evaluation of the subject society, and were therefore left within the ambit of the Indian social structure. The evidence also suggests that, within a strongly stratified society, different emphases were given to different crimes. To the *bhadralok*, for instance, abduction or rape was a serious, yet "hidden" crime, as was abortion. Social disgrace which brought *lajja* (shame) was to be avoided at all costs. For the prevention of this, legislation was sought, yet, if victimised by such crimes "upon the person", legal redress became impossible. The *chhotolok*, while sharing the code of *lajja*, were not as oppressed by, or completely subservient to it, as

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<sup>62</sup> Stainforth, Commissioner of Circuit of Division to Sec. to GOB, 13 Mar. 1854, 143, 105, paras. 92, 93, BJP, 4 Jan. 1855, IOL.

<sup>63</sup> Commissioner of Circuit, to Sec. to GOB, Tippera, 20 May 1854, 148, 225, para 99, BJP, 4 Jan. 1855, IOL.

<sup>64</sup> Edmund E. Cox, Police and Crime in India, New Delhi, (first published, 1910), 1976, p. 273.

the bhadralok were. Thus the punishment of the woman or the lover was far more visible amongst the lower classes than the higher castes, a general trend recorded by the government.<sup>65</sup> The colonial government also recognised this space of "domestic" crime as a peculiarly Eastern or "oriental" crime, arising out of Bengali customs and practices, and was therefore impossible to judge by European standards. Critical of such crimes the government might be, and such social practices creating a wide plethora of crime condemned as "uncivilised", yet the government did not feel it incumbent upon itself to prevent such "domestic" crimes, an aspect to be discussed shortly.

This attitude was completely reversed in the context of the murder of witches and sorcerers in the Colehan (Singhbhoom) and Chota Nagpur region. The government was critical of the "primitive" people and their customs and superstitions and wondered about the society which made such crimes possible. There was, however, a twist in the situation. The "barbaric crimes" might have arisen out of the customs and superstitions of the people of this region, but at the same time, the authority of the government could be imposed through the medium of the trials and sentences delivered. This was a zone where the juridical primacy of the colonial administration was uncompromising, and the local authority, with its particularistic world-view was completely subsumed within the superordinate legal and penal structure. There was no compromise, neither was there any open contest between two different sets of authority. The standard set by the colonial criminal authority, in universal, rational, liberal legal terms, established the terms of the juridical transaction.

The murder of an old man, said to be a sorcerer, by a villager, Gujroo, was therefore judged "heinous", and the perpetrator of this "foul deed" deserved the severest sentence the colonial law could give - punishment by death.<sup>66</sup> The agent was particularly struck by the "open and artless manner" in which Gujroo confessed to the murder, and Allen noted incredulously that "he spoke of and certainly regarded his crime as an act of

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<sup>65</sup> *Ibid.*, Chittagong, paras. 18, 19, 20. Also, Noakhali, paras. 53, 61. IOL.

<sup>66</sup> W.J. Allen, Governor-General's Agent and Commissioner, to W. Grey, Secy to GOB, 5 Jul. 1854, 66, 74, BJP, 17 Aug. 1854, IOL.

self defence".<sup>67</sup> Even the dead man's wife shared the same callous attitude towards the crime, while the villagers were most relieved. The killing of a witch was also received with similar indifference by the Kols, and again with a sense of disbelief by Allen. He recorded that the killing of the old woman was "one of the many crimes produced by the belief in witchcraft which is so universal among the Cole population".<sup>68</sup> Thus their perception of the killing as "a very good deed" that deserved approval sat askew the steel-frame of colonial criminal law even though the local authority had not thought the crime "heinous", and had merely passed a sentence of imprisonment for seven years. This fear was justified when the agent thought the judgement inadequate, and took over the case from the local zamindar.<sup>69</sup>

The ideological preponderance given to the rule of law, a force that propelled the functioning of the legal and penal institutions, and which subsumed within itself any local authority's juridical function that operated within the local world-view, and thus forced an alien moral code, with its concomitant criminal code upon a society governed by a different set of rules. Thus, though Allen realised that the killing of the witch was "one of the many crimes produced by the belief in witchcraft which is so universal among the Cole population", the murderer was sentenced capitally.<sup>70</sup>

There was, then, a selective process on both the sides. To the local world view, the murder of a sorcerer was plausible, while to the colonial judicial process, represented by the agent, the probability of the dead man being evil on account of sorcery was nullified by the liberal rational views generally held. The disparity between the apex of the colonial government and the practical functioning at the district and local level, was separated by a wide gap that marked the ideological functioning of the colonial criminal law from the centre to the district. Thus Allen could recommend the sentence to be one

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<sup>67</sup> W.J. Allen, Agent to Governor General, to W.Grey, Sec. to GOB, Chota Nagpur, 5 Jul. 1854, 66 & 68 (enclosure of deposition), 74, BJP, 17 Aug. 1854, IOL.

<sup>68</sup> *Idem*, to Cecil Beadon, Sec. to GOB, 5 Oct. 1853, 157, 73, BJP, 17 Nov. 1853, IOL.

<sup>69</sup> *Idem*, to Sec. to GOB, Singhbhoom Division, Chota Nagpore, 5 Jul. 1854, 65, 74, BJP, 17 Aug. 1854. Also see Agent of Governor General, to Sec. to GOB, Chota Nagpur, 22 Jul. 1854, 83, BJP, 5 Oct. 1854, IOL.

<sup>70</sup> *Idem*, to Cecil Beadon, Sec. to GOB, Chota Nagpur, 5 Oct. 1853, 157, 73, BJP, 17 Nov. 1853, IOL.

of transportation for life, as it was "expedient to make some allowances for the wild and barbarous state of the people of the Colehan, whose crimes are not ... to be measured according to the standard of more civilized regions".<sup>71</sup>

The policy at the top of the administrative system, however, dictated the necessity of a totally different legal stance. There was the practicality of the prestige of the colonial government to be considered and the sanctity of the strictly legal stance had to be maintained. Therefore, the minute of the Lieutenant-Governor in 1853, regarding the criminality of the Kols bore out this ideological basis of the colonial government and stated explicitly that "the punishment of death should always follow the crime of murder ... and that no plea of savage ignorance or barbarous custom should be permitted to stay the full execution of the law upon those who are found guilty of taking human life".<sup>72</sup> Thus two administrators, one middle-ranking, the other at the apex of the local hierarchy, had two jarring perspectives. Allen's came from a close involvement with the local society, and the knowledge that the world-view of the Kols in no way matched the world-view taken by the colonial administration, while the local government, divorced from this grass-root connection, was engaged in the furtherance of the image of the colonial rule as sternly "just", "impartial" and was therefore, unheeding of the widely divergent local conditions.

### **The Public and the Private**

The social structure of the *bhadralok* made the government penetration of the *andarmahal* or the "interior" of the house impossible. Thus there was a great degree of compartmentalisation between the "public" and the "private". Any encroachment by the colonial government into the "private" domain made the *bhadralok* bitterly resentful. The government, too, was not keen to disturb the balance. This was a policy diametrically opposite to the one pursued in the domain of "public" crime, where suppression was the

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<sup>71</sup> *Ibid.*

<sup>72</sup> H. Pratt, U. Sec. to GOB, to Agent to Governor-General, S.W. Frontier, 16 Sep. 1853, 156, 2173, BJP, 17 Nov. 1853, IOL.

key-word. Such crimes did not impinge upon the domestic space, but directly threatened the authority of the government. The *bhadralok* too, held the government's position that the suppression of such public crimes had to be left to the government, armed as it was with the weapons of control - in the police, the courts and the jails.

Even the possession of such an armoury, however, did not equip the government to tackle a crime like abduction or rape, as Bengali society, *bhadralok* and *chhotolok* alike, barred the way to any investigation once the crime was committed. It was too closed a subject for the government to tackle. The concern with morality, preservation of the social structure, all the fears concomitant with the maintenance of the complete isolation of the feminine world away from the "public" arena of the *thanas*, courts and even the jails made all sections of Bengali society extremely fearful of approaching the law. These crimes were completely subterranean, hidden by the dictates of social mores. If made "public", such crimes, far from being redressed, more often than not turned the victim into an object of social odium. Though aware of the commission of such crimes, the government left them to be contained within the "domestic" sphere, for they did not impede or threaten the working of the administration, or threaten its authority in any way. Only when there was a direct spillover into its concerns, did the government react.<sup>73</sup> Such connections could occur at a comically personal level. For instance, in the 1850s, the Chief Magistrate of Calcutta became aware of the crime of abduction and the seriousness of such a crime through the misfortunes of one of his *khudmutgers* (personal attendants), "a particularly quiet young man", who "was said to be respectable". He had asked for leave to get married, but three months after his marriage, his wife left for her natal home, with leave from her unsuspecting husband, only to get married again. Recalling the painful incident, the Chief Magistrate stated at a personal level the government's inability to check a crime which would have been legally punished in Europe:

He [the *khudmutger*] applied to the Police, who said they could

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<sup>73</sup> W.H.Elliott, Chief Magistrate of Calcutta, to Cecil Beadon, Sec. to GOB., 31 Jan. 1853, 201 & 202, BJP, 26 Jan. 1854. Also, James Hume, Senior Magistrate of Calcutta, to W.H. Elliott, Chief Magistrate of Calcutta, Jul., 25 1853, BJP, 26 Jan. 1854, IOL.



not help him. He begged me to interfere, which of course I could not do .... The first husband all but went mad on the subject and gave me such serious annoyance, having previously been an excellent servant, that I was obliged to discharge him.<sup>74</sup>

Subsequently, in a statistical survey, this crime assumed such numerically serious proportions that the government could not ignore it. The concern was expressed in a manner which revealed the reluctance of the colonial government to interfere in a matter that could boomerang on the administration:

They say most truly that in the age of the English law, this infamous practice of abduction is a most grave offence, cognizable only by the higher courts and justly visited by heavy punishment.<sup>75</sup>

At the same time, it was felt to be a peculiarly social crime, arising from the social customs of the indigenes, and as such, legislation could well be meaningless:

But we cannot instil our ideas of right and wrong into the mass of Natives, however injured the husband or parent be, the bystanders all but agree in the estimate of the offenders themselves - that the crime is a light one.<sup>76</sup>

Thus for a variety of reasons, the crime of abduction could not be contained within the new Police Act of 1852, especially Sections 68 and 69, that had been passed to curb the evil. The latter made the abduction of "unmarried" girls under 10 as a felony. Unfortunately, it was felt by the government that "in this country where marriages take place so early a further provision was needed".

In accordance with this necessity, therefore, to secure the safety of all young females under 16 who were unmarried and all girls under 10 who were married, the "decoyers", who enticed them away from their parents, husbands or guardians for either

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<sup>74</sup>Chief Magistrate of Calcutta, to Cecil Beadon, 12 Dec. 1853, 201& 202, 755, para. 15, BJP, 26 Jan. 1854, IOL.

<sup>75</sup>Ibid.

<sup>76</sup>Ibid., para. 17.



immoral purposes, or for the purpose of marrying them without parental consent, could be committed to trial in the Supreme Court. It was soon seen that even these careful measures did not make clear whether the offence fell under the category of "felony" or was merely a "misdemeanour". Taking advantage of the foggiess of the provisions, a man called Preechand Chatterjee escaped imprisonment: and the judges ruled that the new Police Act had no extra provisions to cover this crime. The Chief Magistrate of Calcutta, learning by the experience of his *khudmutger* declared: "It may perhaps be well ... to mention that the extent to which this crime is carried, especially among the Muhammedans, is very imperfectly known or thought of by the authorities".<sup>77</sup>

But while the crime did not involve any direct violation of law and order, requiring the immediate attention of the administrators, it touched the Bengali in a vital spot. A Justice of Peace, a Bengali called Heeru Chunder Ghose, who had committed Preechand Chatterjee to stand trial, protested angrily at this lacuna left by the law, and which was inevitably turned to advantage by the seducers, who escaped without condign punishment. The girl, married and eleven years of age, did not fall under the purview of the law, which only gave legal redress to unmarried girls under sixteen, but not to married girls as they were assumed to have protectors in their husbands. Heeru Ghose protested about the futile clause for he had committed "one Peer Chaund Chatterjee ... on a charge of enticing away a married female of the age of eleven years from the protection of her husband for the purpose of living in adultery with her" but Preechand Chatterjee had been acquitted because of that loose clause in the Act.<sup>78</sup>

Another official perceived the dilemma observed by Ghose, but in a broader perspective of how such "acquittals" could affect the credence of the legal system as a whole. He felt that the excessive trouble and annoyance of prosecuting to conviction in the Supreme Court rendered such prosecutions, in cases of this class, almost unknown, for fear that disgrace would be made public, and also the knowledge that the disgrace

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<sup>77</sup> *Ibid.*, para. 15.

<sup>78</sup> W.H. Elliott, Chief Magistrate of Calcutta, to Senior and Junior Magistrates of Calcutta, 31 Jan. 1854, Nos. 201 & 202, citing Heeru Chunder Ghose, Justice of Peace, to W.H. Elliott, Chief Magistrate of Calcutta, 23 Jul. 1853, BJP, 26 Jan. 1854, IOL.

probably would not be followed by a conviction of the offender. Thus the problem could actually become widespread for the "offenders of this class have been emboldened by the acquittal of the culprit[s], when guilt was clearly proven and who escaped only by reason of the defect in the law!"<sup>79</sup>

The Senior Magistrate of Calcutta felt, however, that legislation could not be water-tight in crimes like this. Only if the police were armed with special legal powers to send "decoyers" to the House of Correction for six months after a "speedy prosecution", and the girl immediately despatched to her husband's or guardian's house, could the crime be countered. He declared: "I shall indeed be astonished if numerous cases of this kind be not speedily prosecuted, and further, if the charges do not speedily decrease in number from the speedy prevention of the offence".<sup>80</sup> The Magistrate felt that without such special powers exercised by the police, there was not much likelihood of conviction. At the same time he observed that the unwillingness of Indians to bring cases like these into court partly accounted for the poor rate of conviction. The unwillingness of Indians to approach the courts was corroborated by other officials as well, from a different part of Bengal:

the extraordinary inertia of the people, giving ... every excuse they may find, in delays in the administration of justice, and the distance they have to travel to our courts, and in the annoyance and the loss of time, and expense incurred in attending at them; their conduct in suffering the most atrocious crime to pass unnoticed, often concealing its commission, can only be attributed to extreme indifference and apathy, and a dislike to be put out of their way in the slightest degree.<sup>81</sup>

This official view about the unresponsiveness of the Indians to "our courts" is the key

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<sup>79</sup> Chief Magistrate of Calcutta, to Cecil Beadon, 201 & 202, 755, para. 17, BJP, 26 Jan. 1854, IOL.

<sup>80</sup> James Hume, Senior Magistrate, to W.H. Elliott, Chief Magistrate of Calcutta, 25 Jul. 1854, 202 (on Sec. XIII, Act 1852) BJP, 26 Jan. 1854, IOL.

<sup>81</sup> Captain Henry Hopkinson, Commissioner of Aracan, to Sec. to GOB, 29 Apr. 1854, para. 8, BJP, 9 Mar. 1854, IOL.

towards the colonial understanding of the Indian's response to the "control" machinery and it never substantially changed where the ordinary people were concerned. The Bengalis, all classes included, on the other hand, regarded colonial courts as strange arenas where perplexity reigned and where *hain ke naa, naa ke hain* (yes turned into a no and a no into yes), was a matter of routine confusion. Apart from these reasons for avoidance of the courts on the part of Bengalis, the suspicion turned into a deep distrust when the issue involved female criminality.

The wall of non-cooperation was noted and seemed inexplicable to the colonial administration in the 1850s in an annual report which the Chief Magistrate used to illustrate his observations on Bengali society.<sup>82</sup> This report pointed out that while at one level there was a readiness to report crime, both true and false, at another level, even the committal for crime was problematic, since one half of the indigenous population was sealed off from official enquiries, a situation true for at least the middle classes. Thus, the "identification" of the criminal was only partially possible. Even though he conceded that the "Natives of Calcutta [were] generally willing to report occurrences [and that] the gossip of the Town and Newspaper Reports render[ed] concealment difficult",<sup>83</sup> he pointed to another insurmountable problem. The "Natives" (men) did not themselves know what went on in the interior of the house. Thus the "thefts occurring in the Female apartments of wealthy natives" remained an area where the criminality of the inmates could never be computed, for even "the males could hardly give an account of it [missing property]" from within the *antahpur*, as it was considered the exclusive domain of women.<sup>84</sup> Therefore the chance of the colonial legal and penal institutions operating within this space was slight. What it might attempt to do was to define the classes that could have an exclusive domain for the women, which forbade the entry of law or its

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<sup>82</sup> W.H. Elliott, Chief Magistrate of Calcutta, to GOB, 17 Apr. 1854, 53, 195, para.11, BJP, 21 Sep. 1854, IOL.

<sup>83</sup> W.H. Elliott, to GOB, 17 Apr. 1854, 53,195, para. 13, Appendix D, Suppressed Crime, case no. 4, BJP, 21 Sep. 1854, IOL.

<sup>84</sup> *Ibid.*, para. 12.

representatives within the *antahpur*.<sup>85</sup> As half of the *bhadralok* population could not be assessed in any capacity whatsoever, the criminality of the communities by taking a percentage of "criminals" to the total population, proved to be difficult. This difficulty was perceived to lie in the fact that in the well-to-do communities, the men refused to give the total number of women in the house, while the poorer classes could not assess the total number of family members:

The poorer classes of Natives are hardly able to give the requisite information. The rich disregard an enquiry as to the males, and are offended by a question as to the females of their families.<sup>86</sup>

This lack of information about the criminality of women was reflected in the statistical returns on women in the Bengal Jail Administration reports. These were consistently low for the entire period 1854-1910, with minor variations during famine periods. (See Appendix 1). These statistics revealed that a certain section of the female population had turned criminal to cope with the crisis. In spite of this link with an economic crisis, generally female criminality was seen to exist primarily at the site of their sexuality, both by the colonial government and Bengali society. The higher castes protected this area of female sexuality by victimising the transgressing woman in the privacy of the *antahpur*, a zone which the colonial government recognised it could not breach. The lower classes punished such sexual transgressions on the part of the woman more publicly, where the law could operate with some success.

A few oblique references to female criminality were shown to be closely tied up with illegal expressions of female sexuality; either abortion, the murder of an illegitimate baby, or the murder of a husband because of an illicit love affair.<sup>87</sup> Perhaps these reasons prevented the penning of such issues that were seen to threaten the fabric of society. In 1875-76, an enquiry was set in motion as a result of the tracts written by the Dewan of Baroda, Madhav Rao, on the applicability of the death sentence or

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<sup>85</sup> W.H. Elliott, to GOB, 12 Dec. 1853, 201 & 202, 755, para 13, BJP, 26 Jan. 1854, IOL.

<sup>86</sup> *Ibid.*, para. 17.

<sup>87</sup> Ranajit Guha, "Chandra's Death", Ranajit Guha (ed.), in *Subaltern Studies, Vol. V*, Delhi, 1987, pp. 135 - 65.

transportation for life on "women of sensibility", for the murdering of their illegitimate children.<sup>88</sup> Rao, following Bentham's argument on "Utilitarianism",<sup>89</sup> felt that the public "imprisonment" of women in their own locality for seven years was more effective than either transportation or a capital sentence. The public disgrace of the woman, if she was kept within her own familiar milieu, would have greater deterrence as an exemplary punishment. Moreover, if the "reasonable" seven-year sentence was absolutely assured for the offender, the "native mind" would not be revolted by excessive punishment: "I doubt if a single native of India who witnesses an execution of this kind, would say "rightly served", or "justice has been done", or "the culprit has properly expiated her offence".<sup>90</sup>

This elicited a response from the Government of India (GOI). Information was sought regarding cases of infanticide over a period of five years, to re-assess the working of the Indian Penal Code over a deeply entrenched social problem and female crime. The idea was to look afresh at "The question Rao raises of applying the Indian Penal code on the question of a woman killing her illegitimate child immediately after birth".<sup>91</sup> Rao's assessment of the "native mind" implied the existence of the crime on an all-India basis, and therefore, opened the path of enquiry to Bengal as well. Thus the question of a woman killing her child in the Indian social context was acknowledged by the government to be "different" and the local magistrates were asked whether the punishment should therefore also be "different".

In 1876, therefore, the Government of Bengal was asked by the Government of India to investigate the cases of women being given death sentences or transportation for life when guilty of infanticide, especially regarding certain specific questions. First, the frequency with which women were sentenced to death or to transportation for life.

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<sup>88</sup> Whitley Stokes, Sec. to Government of India (hereafter GOI), Legislative Department, to Sec. to GOB, Aug. 1876, 574, BJP, Oct 1876, pp.380-383, WBSA.

<sup>89</sup> Gerald J. Postema, Bentham and the Common Law Tradition, Clarendon, 1986, pp. 304-358.

<sup>90</sup> Whitley Stokes, Sec. to GOI, Legislative Department, to Sec. to GOB, Aug. 1876, 574, BJP, Oct 1876, pp.380-383, WBSA.

<sup>91</sup> Rosalind O'Hanlon, A Comparison Between Women and Men : Tarabai Shinde and the Critique of Gender Relations in India , Madras, 1994, pp.37-38.

Second, whether the government was called upon frequently to mediate and reduce such sentences. Third, whether the judges in such cases were unable to decide the guilt of the woman because of the extenuating circumstances governing her actions. Finally, in a clear demonstration of the weight given to public opinion on questions relating to female-oriented crimes, the local government was to address specifically the existence of "a reluctance on the part of the people to furnish information and give evidence in such cases as to occasional failures of justice".<sup>92</sup>

Interestingly, in response to the Government of India's directives, the Bengal government carried out a districtwise survey and came to the conclusion that "female infanticide was not practised in the Lower Provinces and therefore it was unnecessary for the application of the Act VIII of 1870" which related specifically to infanticide.<sup>93</sup> The official conclusion was made on the basis of a fairly broad range of reactions from various sections of the people towards the working of the legal and penal institutions when it came to their operation on a certain section of the Indians.

The crime under investigation was pronounced to be "rare" by the magistrates of Bengal. It was the common opinion that "abortion" in the lower provinces was more common, and therefore infanticide had little chance of being detected in the act. Women were "almost invariably successful in causing themselves to miscarry" and were "therefore not driven to infanticide". In acting thus, they were "perhaps not so much influenced by the fact that the offence of criminal abortion is punishable with a much lighter penalty than that of killing a child after birth as by the fact that they conceal their 'shame'".<sup>94</sup> J.M. Lowis, the Sessions Judge of Bhagulpur, contrasted the "low state of morality" which existed amongst the masses on the one hand, and the very small percentage of illegitimate children on the other, and felt that it was "impossible to avoid the conclusion that abortion and child-murder are practised to a very large extent". The

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<sup>92</sup> Whitley Stokes, Sec. to GOI, Legislative Department, to Officiating Sec. to GOB, Aug. 1876, 574, Judicial, BJP Oct. 1876, pp. 379 - 81, WBSA.

<sup>93</sup> Ibid.

<sup>94</sup> R.F. Rampini, Sessions Judge to Dinajpur, to Sec. to GOB, 6 Dec. 1876, Judicial, BJP, Oct. 1877, p.85, WBSA.

successful concealment of these crimes was put down entirely to the "shame" which attached to a family should one of its women be convicted of "frailty". In the official version, the village information system was the prime mover in the detection of such crimes. Thus, there were "anonymous petitions charging women with the offence of criminal abortion", induced by "ill-feeling and petty squabbling among the lower classes". But though the offenders were brought "to the notice of the authorities", the evidence was tightly suppressed by the culprit's own family, and lack of evidence, not want of information, ensured the paucity of such cases.<sup>95</sup>

The question of evidence, as demanded by the Government of India, was given by the village community, "but reluctance would doubtless be found in a case where a person of high caste was implicated".<sup>96</sup> Thus complaints about such crimes were registered by many who had been eager to supply information in the beginning, but evidence in a court of law was quite difficult to get, and therefore charges remained generally unsubstantiated. The evidence was by and large given by village *chowkidars* (watchmen), as they could make good guesses at the possible mothers, and the service-castes like the *dhobis* (washermen). The Magistrate of Dacca summed up the question of such community evidence on the issue of infanticide, betraying the position of the government in an area where it was wholly dependent on the co-operation of the indigenous society:

in the present condition of the native society [crimes] ordinarily escape detection: but I maintain that this arises more from sympathy with or at least indifference to the crime than from any feeling that the punishment for it is coercive.<sup>97</sup>

Officials therefore grappled with the question of how serious the crime was, and so sought to determine the appropriate length of the sentence. They accepted without much difficulty that the crime of abortion existed, but the law was powerless to prevent it. The

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<sup>95</sup> *Ibid.*

<sup>96</sup> H.C. Oliphant, Judicial Commissioner of Chota Nagpur, to GOB, Manbhoom, 22 Nov. 1876, BJP, Aug. 1877, p. 107, WBSA.

<sup>97</sup> C.B. Garrett, Sessions Judge of Dacca, to GOB, 31 Jan., 1877, BJP, Oct. 1877, p. 119, WBSA.



wide prevalence of abortion in the rural area was undoubtedly responsible for the rare crime of child-murder, "for a reason peculiar to the country", and thus difficult to prove. For, recorded the official opinion, "abortion, as a means of preventing exposure, is well understood, and commonly resorted to, and the means of accomplishing it are to be found in every jungle, and their use is tolerably generally understood".<sup>98</sup>

But it was also generally agreed that the enforcement of the law in these cases would lead to a lot of oppression on the part of the police, as a pregnant woman in such a situation was particularly vulnerable to social odium. If, the police, too, hounded her, as had happened in some cases, the woman's life became miserable. This aspect had not escaped some district officials, who had perceived the intrusion of oppression in the form of the village police, who enforced the law on the person of the pregnant woman and saw to it that she did not abort the foetus. Thus the silence and secrecy governing the crime "made it difficult for a Magistrate to deal with", and it was recognised that "any exceptional energy on his part [was] sure to lead to a great deal of oppression on the part of the police".<sup>99</sup>

There were many such instances of police oppression in a number of illicit pregnancies made public. These publicised cases of women being branded as "loose", because of the proof they carried on their person, said a lot about the manner in which the countryside responded to such an issue. H.C. Oliphant, the Commissioner of Chota Nagpur, recorded a case where one such pregnant woman had been hounded out of the village by the *panchayat*,<sup>100</sup> while the village *chowkidar* was informed of her condition, so that under no circumstance could she abort the foetus. Eventually she delivered the baby, but attempted to commit suicide by jumping with the baby into a well. The villagers got her out, but the baby drowned. She "confessed" her crime to Oliphant, and

<sup>98</sup> C.D. Field, Sessions Judge of Moorshidabad, to Sec. to GOB, 18 Nov. 1876, Judicial, BJP, Aug. 1876, p.105, WBSA.

<sup>99</sup> H.C. Sutherland, Sessions Judge of Backergunge, to Sec. to GOB, 21 Nov, 1876, Judicial, BJP Oct. 1876, p.105, WBSA.

<sup>100</sup> Biharilal Chattopadhyay, "Yamer Bhul", Calcutta, 1894, in Jayanta Goswami's Samajchitre Unabinsha Shatabdir Bangla Prahasan, Calcutta, 1974, p.700 (mentions a *panchayat* where the illicit love affair of an unscrupulous man with a widow was initially questioned by the village *Tanti* or weaver).

described the circumstances under which she had acted, explaining that "she had been shunned by everyone and starved; that she went to the child's father to seek food and drink, and his wife told her that the best thing she could do was to jump into the well, and she did so". She was given transportation for life.<sup>101</sup>

Officials recognised the impossibility of enforcing legislation in a domain that either forced women into a secret bond of their own, or closed the ranks of the family against the intruding law and prying neighbours alike, or publicised cases where the woman was made into a scapegoat, both by the society and by the law, or ended in the murder of the woman concerned, in which the whole village colluded. The last generally occurred at the middle-class or high-caste level and the whole village community kept silent. In the judge's experience, "Some of the most brutal murders ... have been the murder of women convicted of frailty". The cases were extremely difficult to prove, "for the whole village sympathised with and aided the murderers".<sup>102</sup> Families of lower status, however, could not possibly keep the community pressures, gossip and curiosity at bay, and it was at this level that pregnancies, miscarriages, and arrival of new-born babies were not easy to hide. It was also at this level that the law could operate with some degree of success. At this level, a case against a woman branded with child murder, "once her shame has been made public", turned witnesses against her. Thus whether capital punishment or a mere imprisonment awaited her was a matter of indifference to the witnesses, and certainly did not compel the flow of evidence in her favour.<sup>103</sup>

There was a certain amount of sympathy for such women from the magistrates, but only on an individual basis. H.C. Richardson, the Sessions Judge of Nadia felt it was unnecessary "to pass capital sentence" on a woman who was "seduced and deserted", and who finally in despair had strangled her baby and thrown "it in a ditch".<sup>104</sup> The Magistrate of Gaya, too, felt that the crime would persist regardless of

<sup>101</sup>H.C. Oliphant, Officiating Judicial Commissioner of Chota Nagpur, to Sec. to GOB, 22 Nov., 1876, Judicial, BJP, Oct. 1877, pp.108 -109, WBSA.

<sup>102</sup>J.M. Lowis, Sessions Judge of Bhagulpur, to Sec. to GOB, 17 Nov., 1876, Judicial., BJP, Oct. 1877, p.101, WBSA.

<sup>103</sup>Ibid.

<sup>104</sup> H.C. Richardson, Sessions Judge of Nadia, to Sec. to the GOB., Krishnanagar, 30 Oct. 1876, 127,

severe legislation because of social pressure: "Some allowance must be made for the cruel position of the women and for the probable influence of the male relatives at a time of pain and weakness".<sup>105</sup> The Magistrate of Burdwan, A.J.R. Bainbridge, noted the vulnerability of the women placed in such a position, for more often than not, the woman was not a willing participant, but a victim of sexual exploitation, who had no natural protector - the Hindu widow. He summed up her final crime in its perceived context: "she is often outcasted, deserted and destitute, or if not, persuaded against her will. Practically she has no choice, and all the risk and penalty falls on her".<sup>106</sup>

Despite this attitude, a woman and her deviant sexuality that had not been contained within the socially and legally sanctioned folds, opened up a dangerous arena which the local colonial government was not prepared to address. Thus, "due regard to the customs and feelings peculiar to this country" had to be paid, and which could "not be forcibly made to fit the groove of European legislature".<sup>107</sup>

The lower-caste woman, as pertinently pointed out by Macpherson, the Judge at Cuttack, was the victim of both the indigenous and the colonial networks of justice, which worked simultaneously in this respect. The community was closely linked through the services of the *dhobi*. He was the first person to be aware of the anomalous situation of the woman, "owing to certain clothes not being sent to the wash as usual [menstrual clothes]", and if his silence was not bought, occasionally very difficult, due to the woman's poverty, her condition would be broadcast to the whole village. The woman would then be marked out as a social pariah. The police and the *chowkidar* would keep her under surveillance to see that she had no opportunity to commit a "crime". Thus Macpherson saw the woman as caught in the double bind of indigenous "ostracism" and colonial legal "surveillance" during pregnancy, and after delivery, if she killed the child,

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Judicial, BJP, Aug. 1877, p.87, WBSA.

<sup>105</sup>T.F. Bignold, Offg. Judge of Gaya, to Sec. to GOB, 6 Nov. 1876, Judicial, BJP, 1877, p.91, WBSA.

<sup>106</sup> S.J. of Burdwan, A.J.R. Bainbridge, to Sec. to GOB, 29 Nov. 1876, Judicial, BJP, Oct. 1877, p.112, WBSA. Also see Appendix I, Hindu widows marked out as criminal section by 1881.

<sup>107</sup>J.B. Worgan, Offg. S. Judge of Rajshahye, to Sec. to GOB, Beaulah, 31 Oct. 1876, Judicial, Aug. 1877, pp.87-88, WBSA.

to be under the colonial criminal law:

It can hardly be a matter of surprise if a woman placed in this position ... should elect to commit deliberate crime [e.g. abortion, infanticide, and concealment of birth] .... to subject her to the same punishment as a deliberate cold-blooded murderer seems, to say the least, unjust ....<sup>108</sup>

But the colonial law was caught in an invidious position, "for while on the one hand women may not be unduly interfered with, on the other, the crime may not be encouraged".<sup>109</sup> As pointed out by Rosalind O'Hanlon, women's crimes arose principally out of the domestic sphere,<sup>110</sup> and were committed under intense mental and physical exhaustion, and even in despair. This could also be seen as the woman's last protest into killing what she considered her very own in an act of self-assertion and revenge.

While on the one hand cases like these pointed out to the officials that there were deeper currents at all levels of indigenous society than the colonial legal and penal system could encompass, there was also on the other hand, an attempt to rationalise the sentences imposed on the culprit. Whatever the social circumstances, when once a woman was accused and brought before a court of law on a charge of infanticide, the court would then judge her according to the established law. Capital punishment was seen to be an extreme measure of dealing with such a criminal, unless of course infanticide was widely prevalent and "thus called especially for repression", but transportation for life, not just imprisonment for a few years, was felt to be extremely desirable. This was because such a crime was generally associated with the low morals of a certain class of the indigenous population, and transportation for life was the only alternative: the society would never accept her back within its folds after the shorter prison term was over: the colonial government therefore took it upon itself to dispose of

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<sup>108</sup> Macpherson, Judge of Cuttack, to GOB, 7 April, 1877, Judicial, BJP, Oct. 1877, p.123, WBSA.

<sup>109</sup> Ibid.

<sup>110</sup> O'Hanlon, A Comparison Between Women and Men, p.37.

this deviant sexuality: "The punishment of transportation when actually inflicted leaves the woman ... free to marry a fellow-convict and rear a family, which is quite the best thing that could happen to her".<sup>111</sup>

There was also the harsher attitude stated about the criminality of a woman who had killed her child: "A woman who would kill her own newly-born babe is not the class of criminal to favour whom an English Judge would strain his conscience".<sup>112</sup> The motive for such a crime was attributed by Oliphant, the Commissioner of Chota Nagpur, to selfishness on the woman's part to avoid disgrace.<sup>113</sup> This attitude was also shared by the Magistrate of Dacca, who felt that such criminals should not to be given any special considerations by the law. Thus the other side of the colonial legislation that merely upheld the liberal principles of legislation, without any attempt to fit it within the framework of the indigenous structure, was seen in typical statements, as in the instance: "I cannot too much deprecate the idea that the test of our legislation is to be the approbation of the uneducated masses in India".<sup>114</sup>

From the discussion above, it is clear that women's criminality was perceived by the bhadralok and the chhotolok alike to be linked up to sexuality. If uncontrolled, there were threats of scandals, that could end up in the most public of exposures, in the courts and in the jails. Madhav Rao's assessment of the humiliation of a "sensitive woman" in the jail, made to undergo a sentence for imprisonment in full public view, was made in an upper-caste male reading of the possible societal reaction to the spectacle of a woman who had committed the most unfeminine crime of taking her own child's life, thus at one blow destroying her claims to the pride of motherhood, to the pardon of the society, and at the same time bringing disgrace to her family. This was the fear of the consequences for the woman - getting caught by the village *chowkidar*, and being seen as the worst

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<sup>111</sup>T.F. Bignold, Judge of Gaya, to Sec. to GOB, 6 Nov. 1876, Judicial, BJP, Oct. 1877, p.72, WBSA.

<sup>112</sup>E. Drummond, Sessions Judge of Sarun, to GOB, *ibid.*, 11 Nov., 1876, *ibid.*, pp.97-98, WBSA.

<sup>113</sup>H.C.Oliphant, Judicial Commissioner of Chota Nagpur, to Sec. to GOB, 22 Nov. 1876, Judicial, BJP, Oct. 1877, p.107, WBSA.

<sup>114</sup>C.B.Garrett, Sessions Judge of Dacca, to GOB, 31 Jan.1877, Judicial, BJP, Oct. 1877, p.119, WBSA.

kind of transgressor - of the murder of the "*bhruna*" (foetus), one of the worst *shastric* crimes, or the murder of one's own child, an inhuman act, completely against the image of the nurturing mother, was therefore the ultimate image of degraded femininity, as envisaged by Rao.

By the same token, a Bengali salaried employer in the judicial branch, and a representative of the *bhadralok*, Juggadanund Mookerjee, the junior government pleader, refused to look at the society which produced such crimes, but held the view that the criminal was alone responsible for the crime. He declared that the motive could not be mixed up with crime, as that would confuse the issue- which should then hold a father killing a deformed child, or killing his child because of extreme poverty, or even the murder of witches in the light of extenuating circumstances. All these cases called for "equal, nor [sic] greater consideration", and therefore the "criminality" of the woman should be judged by the rigid standards fixed by the government, and "the severity of the law should remain in the hands of the government alone".<sup>115</sup> Not even the *prahasans* (farces), quick to pounce on the "modern woman", could encompass this category of degraded femininity. In an oblique manner, the middle-class widow became part of the Bengali concern with crime, a direct off-shoot of the official statements on the criminality of the Hindu widow, perceived by the latter as a consequence of the unnatural celibacy imposed on her.(See Appendix I). Thus Heeley noted in 1873 that generally female criminality consisted of offences against the person, abortions and child murder being recurrent themes.<sup>116</sup> By 1885, the low criminality of Muslim women was attributed to the fact that widowhood amongst Muslims was not as common as among the Hindus.<sup>117</sup> By 1902 the criminality of Hindu widows had become a well established fact.<sup>118</sup> But the farces, while treating the problem of widows as a source of sexual crime, was of the opinion that it could be solved within the society, without any active official interference.

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<sup>115</sup> Babu Juggadanund Mookerjee, to Superintendant and Remembrancer of Legal Affairs, H.Bell, 21 Feb., 1877, Judicial, BJP, Oct. 1877, p. 121, WBSA.

<sup>116</sup> AJRB 1873, by Dr. Heeley, Inspector General of Jails (henceforth IG), Calcutta, p.12. IOL.

<sup>117</sup> AJRB 1885, by Dr. Lethbridge, IG, para 19, Calcutta, pp.2-3, IOL.

<sup>118</sup> AJRB, 1902, by Major R.J. Macnamara, IG, Bengal, Calcutta, p.2, IOL.

The *bhadramahila* as a criminal was never the subject of *bhadralok* discussion. In the *prahasans* (farce), the *chhotolok* female criminal had no place, which even the prostitutes had managed to get.<sup>119</sup>

### Courts and Jails

By the 1870s, from Mookerjee's upholding of the validity of the law operating on women criminals, it can be perceived that the *bhadralok* did not object to women being subjected to the legal process, only the *bhadramahila*. This was the combined result of the colonial administration seeking the support of educated Indians, and the latter attempting to understand the nature of the government. In the 1850s, the colonial administration attempted to gauge the reaction of the Bengali to the new colonial institutions of control. This attempt can be seen in the sending of detailed reports of the working of the police and the legal process of the city of Calcutta to the leading libraries like Midnapur, and to the editors of important Indian-owned newspapers like the Hindoo Intelligencer and the Hindoo Patriot.<sup>120</sup> To rule by the records and reports generated by the officers rendered a flexibility to the colonial rule, specially in the formative stages.<sup>121</sup> The assessment of the effectiveness of Act V of 1848 for the maintenance of peace in the countryside was part of this effort by the colonial administration to understand the effects of the control mechanism better.<sup>122</sup> A further indication of this can be observed in an annual report which tried to trace the differences in the Bengali mentality regarding the reporting of crimes, and the acceptance of legal measures in Calcutta and the surrounding mofussil.<sup>123</sup>

The report, liberally interspersed with the official interpretation of facts and

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<sup>119</sup>Sumanta Banerjee, The Parlour and the Street: Elite and Popular Culture in Nineteenth Century Calcutta, Calcutta, 1989, pp.111-113.

<sup>120</sup> Government of Bengal Resolution, 27 May, 1854, 65, BJP 21 Sep. 1854, IOL.

<sup>121</sup>R. Saumarez Smith, "Rule by Records and Rule by Reports: Complementary aspects of the British Rule of Law", Contributions to Indian Sociology, 19:1, Jan-Jun. 1985, pp. 153 - 76.

<sup>122</sup> B.I. Colvin, Register of the Nizamut Adalat, to Session Judges and Magistrates in Lower Provinces, 29 Nov. 1853, Circular, 4, 14, BJP 1 Dec. 1853. IOL. Also see Register of Nizamut Adalat, to Cecil Beadon, U. Secy. to the GOB, 26 Mar. 1853, 10-11, 13, 309, 1403, BJP 19 Aug. 1853, IOL.

<sup>123</sup> W.H. Elliot, to Cecil Beadon, 53, 195, BJP, 1855, IOL.

figures, actually indicated government policy towards criminality and its impression of the Indian response. Although official opinion concluded uneasily that the sparsity of the *thanas* and police in the countryside accounted for the under-reporting of crime, the existence of the same problem in Calcutta could not be ascribed to such a reason. Both the police station and the Sessions courts were not located at inconvenient distances for the inhabitants of Calcutta.<sup>124</sup> Therefore the chief magistrate equated the reporting of crime and the Bengalis' alacrity to approach the courts to the Bengalis' acceptance of the colonial rule, which would further lend credence to the colonial administration's claim to have re-established law and order. Official opinion, using the facts of the report, was caught between the realisation that the indigenous response to the institutions of control was ambiguous and the need to have an optimistic assessment of the Indian acceptance of the colonial yoke. There was an undercurrent of official recognition that there were other incalculable factors, both in an intensely urban population as well as in the countryside, which regulated the response to the law-making and law-enforcing institutions, which had nothing to do with the availability of the *thanas* or courts at convenient spots. Even reporting crimes or registering law suits did not necessarily mean appreciation of the legal and penal apparatus, as the Magistrate observed, again from the data presented by the report, for very often these colonial institutions were used for revenge, or as extensions to quarrels by "a party, and, where his feelings are irritated, undergo any trouble and expense, carrying through a charge of petty assault, or perhaps invent a charge of trespass or of theft". Yet the same person was capable of concealing thefts and urged "as his reason the trouble of prosecuting" the culprits. The unresponsiveness of the indigenous society to "our Police or our Courts", seemed ominous to the government as it realised that these institutions were even used as instruments of revenge on occasion, thereby negating the rationale of the "rule of law". Such blatant misuse of the *thanas* and courts augured ill for the healthy growth of the institutions. From the vernacular sources one can observe that it was the unfamiliarity and impersonal nature of these institutions which shaped the initial middle-class response to the legal institutions, which will be

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<sup>124</sup>Ibid.



discussed further in Chapter Five.

The records on the Indian jail population also gave the colonial administration some indication as to the degree of criminality of the communities, a view which percolated down to the educated middle classes. Thus the location of the attempt of the colonial penal institution to generate information about the criminal classes of Bengal in conjunction with similar attempts of the colonial government in the criminal court records and police records is important for the bhadraklok perspective on crime and criminality as well. This in turn helped it to shift criminal identification away from itself, and project a self-image that was essentially non-criminal in character, an aspect that will be taken up in detail in Chapter Three.

This chapter will now examine the manner in which the colonial prison was used as an instrument to understand not just the prison population, but also the civil population ✓ that lay outside. Thus the prison was used as a source of information about aspects of civil society that might provide the key to better control of not only the criminal classes that were imprisoned within the jail, but which would also give access to the criminals and criminal classes that remained outside. With this purpose, this section takes up an analysis of the annual jail reports which demonstrates the effort of the colonial government to categorise the criminal population.

As noted in the previous section, a captive population lent itself easily to categorisation. The 1852-53 report on the "houses of ill-fame", the tabulation of the "bad characters" who frequented them, and the analysis of the convicts in the Calcutta House of Correction, their backgrounds etc. is one of the earlier efforts of the colonial government to understand the society it was ruling over. The categories created to examine the nature of the jail population in the Calcutta House of Correction revealed the colonial administration's attempt to determine the ratio of the criminality of the Hindus and Muslims, the education level of the prisoners who were jailed, the proportion of female criminality as opposed to male criminality, and so forth. The House of Correction, thus formed a study at micro-level that was sought to be reproduced on a progressively wider and broader basis at the district, provincial and finally at the national

level. (See Appendix VI).

Thus this early attempt of the colonial administration to invest the number 1482, the total jail population in the House of Correction, with a series of interconnected meanings that would allow it to form certain generalisations about the nature of the society it would have to control, is important as a trend-setter. These figures informed the administration that out of a total of 1422 prisoners, 704 were Hindus, while 718 were Muhammedans. From this, without even a census of the total population, the administration concluded: "This speaks very ill of the Muhammedan population, the whole amount of which is vastly below that of the Hindus". It was noted that the number of women convicts were very low, a mere 18 to the total number of prisoners, but no assumption of the criminality of the women could be made, owing to the total ignorance about the female population that confronted the colonial administration within the civil society. The literacy rate of the prisoners was collated, too, in an attempt to locate the social background of the jail-goer. The last was a part of the new regulations in the 1850s for the purpose of creating a body of information on the criminals admitted to the jails.<sup>125</sup> (See Appendices VI, VII).

The annual jail report of 1854-55 demonstrates the similar manner in which the jail population was categorised. Thus at one level there were rules and strategies devised by Loch (IG) and Mouat (IG) to discipline the prison population, while at the same time information was sought to be mobilised along certain channels of inquiry. For the first, there were rules for the mustering of prisoners at sunrise and sunset, for exacting penal labour, for rules and regulations conditioning the prisoners' behaviour in jails.<sup>126</sup> The second sought information along the lines that would empower the jail administration to control the subject race better. Thus statistics was required firstly on the sources of crime, secondly on dangerous classes, thirdly and at a more particular level, on the

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<sup>125</sup>W.H. Elliot, to Cecil Beadon, annual report, 53, 195, paras 21- 27, BJP, 1855, IOL. Also see David Arnold, "The Colonial Prison : Power, Knowledge and Penology in Nineteenth Century India", in David Arnold & David Hardiman (eds.), *Subaltern Studies VIII*, Delhi, 1993, p.158.

<sup>126</sup>T.C. Loch, Inspector of Jails, to W. Grey, Secy to the GOB, Calcutta, 7 Sep. 1855, Appendix 11A, lxxxvii, Heads of Enquiry in Criminal Statistics.AJRB, 1854 -55, Calcutta, 1856, IOL. Also Arnold, "Colonial Prison", pp. 177 - 78.

specific castes in which crime prevailed.(See Appendices IV, V). The financial compulsions that propelled the poorer section of society towards crime were to be gauged through statistics on the social and pecuniary state of the criminals and on the mode in which the families of criminals subsisted. The social stratum of the prisoners formed another avenue of enquiry that needed information about the educational level of the prisoners. The degree of criminality evinced by the mass of the jail population was to be assessed by accurate statistics on the number of criminals who were undergoing more than one sentence of imprisonment. The age of the prisoners and its correlation with crime would form another head of enquiry. The major information block that the colonial administration faced in the civil society regarding the women could be probed through the information yielded by the women who found their way into the jail, which could then be arranged statistically to project at least an approximation of the status of women, or the types of criminality indulged in by women.(Appendix I).

The Bengal Annual Jail Report of 1864-65 showed the colonial prison authorities in possession of the kind of data that would yield certain generalisations on the criminal classes and sections that peopled the jails. These had been engendered by following the lines of inquiry that had been set out in the mid 1850s, such as had been seen in the Jail report of 1854-55. As Reilly had complained about the ineffectiveness of the criminal law to combat the evil of habitual criminals, so did Mouat. Like Reilly, Mouat too saw the solution to the problem of habitual criminals to be permanent transportation for life. Being in charge of the Bengal prisons, he naturally objected to their incarceration for life in prisons, as he saw them as contaminating influences on the rest of the jail population. Moreover, he felt that these classes of criminals - "the professional poisoners, dacoits, thugs, procurers of abortion, and other classes to whom honest industry is unknown", could never be deterred from a life of crime by prison discipline. Their evil influence could only be countered by permanent banishment, where "they must of necessity cease to exercise their profession and gradually die out". Mouat saw the most incorrigible criminals as the thieves, "whose sentences are comparatively light, and who are constantly the inmates of jails", for the control of which it was necessary to maintain "an

unnecessarily expensive police", and punitive institutions that could not be "made sufficiently deterrent" to prevent these thieves from operating against the interests of society.<sup>127</sup> While the education of the population, would, to a certain extent, prevent crime, it was impracticable, given the state of education of the indigenous society. It was also felt that the jails, as an institution, were not the instruments for imparting general education.<sup>128</sup> It was far more practicable to "diminish those crimes which are plague spots ..." by banishing the habitual criminals.<sup>129</sup> It was determined through statistical information, that by far the the most numerous group in jails were those from the agricultural class: they also suffered from the highest mortality in jails, thus hinting at the personal privation they generally suffered in society. Though the report did not conclude a similar state of impoverishment of the "criminal" section of the society, the "incorrigible thieves and robbers", the proportion of mortality of this section was also very high in the jail, and the results had been "fairly uniform for some years".<sup>130</sup>

These carefully constructed categories on bad characters, thieves, dacoits, burglars, and the criminality of the agricultural castes, were all disturbed during famine years, as was demonstrated in the 1866-67 jail report. The hungry people flooded the jails as grain robbers. The lenient sentences of simple imprisonment, which threw an "idle jail population" on the jail administration, could not be prevented.<sup>131</sup> There were jail-escapes in large numbers from the famine-affected districts, which placed a question-mark on the official assumption that the starving people fell back on jail hospitality in times of agrarian crisis. These prisoners considered their imprisonment as unjust and the report commented: "They considered the stealing of food in a time of absolute want a

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<sup>127</sup>AJRB, 1864-65, by Dr. Mouat, IG, Calcutta, 1866, p.9. IOL.

<sup>128</sup>*Ibid.*, pp.33-34 . See Appendix VI, Table 6.

<sup>129</sup>*Ibid.*, p.10.

<sup>130</sup>*Ibid.*, p.15.

<sup>131</sup>AJRB, 1866-67, Dr. Mouat, Calcutta, 1868, p.24. "The most important judicial fact ... is the very large number of prisoners-5,326- condemned to idleness under the provisions of the Penal Code. In this important particular it seems ... that the ... criminal law ... needs reconsideration. The primary intention of the law is undoubtedly to punish the individual, - but the protection of society, which underlies the original intention, is, in India at least ... scarcely secondary in importance to the first intention".

justifiable proceeding, and regarded their imprisonment as unjust".<sup>132</sup> Punitive jail discipline and the functioning of the full judicial sentence on the offender had to be abandoned as many short-term prisoners were released before their full term of imprisonment was over. Thus, of the 80 prisoners set free before their term was through, "thirty-one were grain-robbers, who were pardoned in consequence of their crimes having been committed under the pressure of want ...."<sup>133</sup>

The break-down of the jail population into different castes, and their separate mortality rates, influenced by their previous occupation before their imprisonment, started from the mid 1860s, and opened up a new trend of the creation of far more detailed records which gave the caste and religious configurations of the subject society. The famine year showed this kind of detailed break-up for only the mortality-rate, as the jail administration was concerned principally with the starving, debilitated jail population that had flooded the jails of such famine affected districts as Bankura, Manbhoom, Singhbhoom etc.<sup>134</sup> The jail report of 1868 showed a district-wise splitting of castes and tribes, of religious groups, including the two major religious groups of Hindus and Muslims, with their criminal propensities. Thus after showing the detailed break-down of the castes and tribes of all the districts, including sub-castes, the report identified the most criminal sections that ended up in the jail. For instance, in Burdwan, the most criminal sections were identified as the Bagdis, and after these came, "at long intervals, the *Domes, Sadgops, Aguris, Brahmans, Haris, Kotals, Gowalas, Kayasths* etc., in the order named".<sup>135</sup> These castes were then enumerated with their individual preferences for different kinds of crime like dacoity, burglary, highway robbery, and so on. It was acknowledged by the administration that the lower castes and classes were mostly responsible for the crimes committed, though it was not their exclusive domain, as the

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<sup>132</sup>*Ibid.*, pp.26-27.

<sup>133</sup>*Ibid.*, p.26.

<sup>134</sup>*Ibid.*, p.26.

<sup>135</sup>AJRB, 1868, Appendix No. V, showing the nomenclature and signification of castes and classes of criminals with a sketch of the chief crimes committed in the districts of the Lower Provinces of the Bengal Presidency[Burdwan].p. clviii.

"wealthier classes take their share and play high - but it must be observed that the jails are having a wholesome effect on all".<sup>136</sup>

This dissection of the criminal classes by these jail reports fell, as demonstrated, on the lower castes and Muslims mostly. With the census of 1871, the high proportions of criminality associated with the Muslim population, and the lower castes were correlated.<sup>137</sup> This aided the educated middle-classes to deflect criminality away from themselves and ignore to a large extent the uncomfortable indication that the jails were actually levelling down caste and class distinctions. The early twentieth-century jail reports, with their break-down of the jail population into occupational criminality, helped the middle classes to have a sharper perception of their own non-criminality as professionals and as government employees, as against the high rate of criminals from the agricultural classes (See Appendix VI).

### **Conclusion:**

This chapter has addressed several problems which affected the shaping of the official discourse regarding legal and penal institutions. The first problem which confronted the government was the identification of crime that directly threatened the establishment of the rule of law. The second was the identification and the commitment of criminals threatening the public peace: this was done by the police. The third was the assessment of the degree of criminality, which was the function of the criminal courts or *faujdari adalat*: this was also the grey area where lack of proof, false witnesses, and the untruthfulness of the witnesses could impede the course of justice. At this level, too, the collaboration of the moneyed Indian elite with the colonial institutions of control became apparent at a very early stage. As the arena where the innocence or guilt of a person was judged under alien circumstances, where even the guilty could not have recourse to falsehood, at least in theory, since they were under oath, it was a unique creation of the colonial power. The fourth problem was the assessment of guilt, and the sentence

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<sup>136</sup>*Ibid.*, p. cxlii.

<sup>137</sup>*Ibid.*, 1872, Report by Heeley, Criminality of the Districts, pp. 5-7. Appendix III.

delivered by the judge in the court. Finally came the expiation of the crime in the penal institutions that was established "primarily for the purpose of punishing, and secondarily for the purpose of reforming them ... not so much for the criminal's own sake, as for the protection of society".<sup>138</sup> Moreover, the sites of the criminal courts and the jails would provide the colonial administration with a public site for the identification of the criminals and also with the categories that would docket the information, rendering the indigenous society immediately visible to the official gaze. From this aspect, especially, the site of the jails was responsible for reducing the elusiveness of the subordinate society for the purposes of control, to manageable proportions. Thus the categories of generating information on the prisoners aimed at multifarious objectives, which would turn the body of the prisoner and the prisons into sites of knowledge useful for the colonial administration. For this purpose, the queries of the colonial prisons were directed at the sources of crime, and the actual identity of the dangerous classes.

*The section on 'infanticide + female crime' is  
excessively long & descriptive - insufficiently analytical  
about the material.*

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<sup>138</sup>Ibid., Heeley, p.2.

## Chapter Two

### The Middle - Class Discourse, 1854-1890

This chapter examines some of the issues around which the consciousness of the Bengali intelligentsia developed from the mid-nineteenth century onwards. The 1850s provide a political backdrop to the tightening of colonial legal and penal institutions for maintaining law, order, and public security. The target of the institutions might be the location and control of the criminal classes and castes, but their operation subjected them to the scrutiny of the educated middle classes. There was, therefore, a constant interplay between these institutions of control and the wider society.

Unlike Ranjit Sen's analysis, which did not take into account the fear of the dacoits constantly threatening lives, property and honour of the Bengali propertied classes,<sup>1</sup> this thesis places the real fear of the propertied at the beginning of the argument: it was fear of the lawlessness engendered by endemic dacoity that made the "rule of law" so attractive to the educated middle classes. Any kind of violence was perceived to be against their peace and security, and hence detrimental to the society as a whole. This happened to be one of the first demands made by the Indian citizens of Calcutta, the right to "sleep peacefully at night". In a petition sent in October 1791 to the Governor-General-in-Council, they stated that they wanted nothing but to lead a trouble-free daily existence and "to dwell ... in peace ... under ... [a] government" that would "preserve ... their property and lives".<sup>2</sup>

The government sought to redress the problem at this stage by overhauling the police system for greater efficiency and by constructing make-shift prisons.<sup>3</sup> By

<sup>1</sup>Ranjit Sen, *Social Banditry in Bengal: A Study in Primary Resistance, 1757-1793*, Calcutta, 1988, Preface, pp. vii-x, 20-21.

<sup>2</sup> Bengal Public Consultations, 19 Oct. 1791, cited in A. Aspinall, *Cornwallis in Bengal*, New Delhi, Reprint 1987, p. 102.

<sup>3</sup> *Ibid.*, pp. 99-119.



the 1830s, the inadequate policing and prison facilities were causing the Bengal government serious concern, as evinced by the Report of the Committee on Prison Discipline in 1838. The 1840s and 1850s saw the intensification of this concern with the legal and penal institutions for the purpose of better control.

### **Acceptance of the Rule of Law**

The findings of the Prison Discipline Committee aroused no reciprocal desire within the *bhadralok* to improve the conditions of Bengal's penal institutions. Their demands at this stage remained limited to the desire to have peaceful nights and security for their lives and property. The high mortality rate in prisons, the insanitary conditions, and the need for better jail buildings - these were solely the concern of the British colonial administration at this juncture. From existing records, it seemed that the prisoners were protected only at the directives of the government officials. "For [it was said] it is beyond all doubt that a wretch once flung into gaol and in irons is deprived of every means to defend himself against his accuser; he is then in most cases even deserted by his friends and family".<sup>4</sup> From this statement it seemed that bhadralok society in general ignored prisoners. An incident in 1854 illustrates this point further. A batch of prisoners, numbering 70 in all, were being transferred from Beerbhoom to Hazaribagh jail under the care of an Indian *dafadar* (subordinate official). The *dafadar* had chained them together with three chains provided for the purpose - the male prisoners on two chains and the two female prisoners on the third - put them in a hut, and then had left for his own amusements. A fire broke out, and 36 prisoners were burnt alive, as they were chained together and could not escape.<sup>5</sup> The reaction to this tragic episode showed how concern and blame were confined to the administration alone. The responsibility of the Deputy Magistrate, R.P. Jenkins, lay in his failure to inform the *dafadar* about the rules in circular no.183, issued in 1813, on the compulsory

<sup>4</sup> Aspinall, *Cornwallis in Bengal*, p.76.

<sup>5</sup> Under Sec. to GOB, to All Sessions Judges, Magistrates, etc., Orders of Government Circulated to Judicial Officers, Circular Nos. 247-282, 6 Jan. 1853, Central Secretariat Library (C.Sectt.), Delhi.

erection of tents, or the limited number of prisoners, ten to twenty at most, who could be chained together on a single chain. Thus the three chains provided by Jenkins for securing the prisoners were inadequate. At the same time, "native agency" was condemned, and it was felt, typifying a general racial argument, that such incidents were bound to take place "when preventive measures rest in Native Agency".<sup>6</sup> Condemnation of such "wanton loss of life" and the corrective measures taken to counter the misbehaviour of the *dafadar*, who "was found guilty of gross negligence and disobedience of orders", dismissed from office, sentenced to four months' imprisonment and fined Rs.50, was all from the official side. The only audible voice was in the form of a government circular, calling attention to the case, "in order that due care may be taken to guard against the occurrence of any other of the same nature".<sup>7</sup> There are no known middle-class responses to this incident. Thus, apart from the administrative recording of the fact that after the fire five prisoners escaped, and all but one of them were recaptured, the incident was an example of the indifference with which prisons and prisoners' welfare were apparently regarded by society in general.

There was, therefore, an uncritical acceptance by the educated middle classes of the advantages of the rule of law, as projected by the colonial power. This faith in the administration made the *bhadralok* willing even to view the figure of rebel Santals and sepoys in the 1850s as disruptive elements, on whom the legal and penal systems could operate with full justification, as such acts of subversion demanded state intervention and punishment.

The Santal Rebellion (*hul*) of 1854-56 drew precisely this response from the *bhadralok*. The letters in the editorial section of Som Prakash, a leading Bengali newspaper, recording the news of the rebellion, perceived the Santals as "wild" and "uncivilised". They were a terror to the *bhadralok* of Murshidabad, Bhagalpur, Birbhoom, and the Rajmahals. These areas were subjected to the attacks of these

<sup>6</sup>H.F.James, Sessions Judge of Beerbhoom, to J.P.Grant, Sec. to GOB, 16 Aug. 1851, 117, *ibid*.

<sup>7</sup>Under Sec. to GOB, to All Sessions Judges, Magistrates, etc., 6 Jan. 1853, L.no. 117 of 1851, Circular Nos. 247-282, p.86. C.Sectt., Delhi.

"scoundrels who were cruelly killing all the men, women, and children and looting all their possessions ... these attacks were even worse than the *Bargi*", referring to marauding Marathas of the eighteenth century.<sup>8</sup> Another reference to the Santal rebellion being "more threatening than the Bargi depredations" in a terrified letter to the editor of *Som Prakash* further showed the principal bhadralok reaction to the rebellion. The writer said he had been reduced to a "pauper, with only a torn cloth for cover". He had no shelter, and he was obliged to "write his letter from the house of a karmakar[blacksmith]".<sup>9</sup> The war-preparations of the Bengal government were approved as the correct measure for dealing with the Santals, who were seen as looters and murderers.<sup>10</sup> The Santals had "all united and had rebelled against the British government" thereby placing the established law and order, and even the colonial power, in danger. As the British government had not faced such a concerted rebellion before in Bengal (the Sannyasi rebellion and the Chuar rebellion had been suppressed without much difficulty),<sup>11</sup> the "magistrates, instead of trying to protect the interests and property of the subjects, were scared, and had taken to community-living to provide themselves with a measure of security".<sup>12</sup> This perceived official "panic" did not inspire the Bengali middle classes with much confidence as the Santals were worse than "even tigers ... [who did] not behave so cruelly ... the Santals have burnt down houses, have cut down whoever came their way, and have left with what they could lay their hands on". The failure of the government to maintain control was condemned by the bhadralok, for "it [was] the fault of the government for not posting any soldiers who could have stopped such raids".<sup>13</sup> The Santals had long shown a capacity for unified action, and therefore the government should have anticipated danger and trouble and kept soldiers posted

<sup>8</sup>Samendra Chandra Nandy, "On Mahratta Raids, Citra Campu of Mahamahopadhyay Banerjaya Vidyalankara", *Bengal Past and Present*, Vol. CII, Part I, 194, 1983, pp. 55-59.

<sup>9</sup>*Som Prakash*, Letter to the Editor, Bhagalpur, 11 Jul., 19 Jul. 1855, Binoy Ghosh (ed.), *Samayik Patre Banglar Samajchitra*, Vol. 4, Calcutta, 1966, p.786.

<sup>10</sup>Letter to the Editor, Amrha, 13 Jul., and Baharampur, 14 Jul. 1855, *ibid.*, pp.786-787.

<sup>11</sup>Suchibrata Sen, *The Santals of Jungle Mahals: An Agrarian History, 1793 - 1861*, Calcutta, 1984, pp. 5 - 9.

<sup>12</sup>*Som Prakash*, 19 Jul. 1855, Bhagalpur, 11 Jul. in Binoy Ghosh (ed.), *Samayik Patre Banglaar Samachitra*, Vol IV, p. 786 .

<sup>13</sup>*Ibid.*, p.787.

near these "duratmas" (scoundrels). Moreover, it was observed that in this rebellion the government would not incur any losses, only the propertied classes would lose their possessions.<sup>14</sup> It was deplored that even the sepoys brought into the area in huge numbers, were not sufficient to arouse fear in the "scoundrels", as they knew themselves to be skilled with bows and arrows. The Santals, as a "terrible jati", were reputedly endowed with great powers of survival in inhospitable conditions. They could turn to any type of food, and they were capable of retreating into the mountains and living on whatever they found; if they were defeated in battle, they could regroup, and return again to attack.<sup>15</sup>

It was only later, with the publication of other investigations into the nature of the rebels, that the initial image of the Santals as "lawless savages" was dispelled, and their rebellion put down to external factors, namely the torture and rape of Santal women by railway officials, acts "which a strong race was not prepared to suffer in silence".<sup>16</sup> Yet, despite this attempt to understand the rebellion in terms of protests, rather than mere savagery, the representatives of the middle classes constantly slipped back into the initial image of the "wild and uncivilised" Santals. A reporter of *Som Prakash* wrote that "almost 30,000 hill-tribes, with arms, have divided into two forces, one travelling towards Birbhoom, the other moving towards Jiyaganj and Murshidabad, with plans to loot Murshidabad".<sup>17</sup> A reporter from Janghipur also complained of the attacks of the Santals on the villages of Belia, Palsa, and Moheshpur, and their progress towards Janghipur, from whence the people were running away in anticipation of trouble. The "rich and respectable people" in Burdwan were touched by panic, it was reported, and were trying to hide their property. During this crucial juncture, the *bhadralok* felt aggrieved, firstly, that the government had failed to protect property, and secondly, that it had failed to distinguish between the "respectable people" and the lowly while requisitioning "coolies" or labourers for the movement of goods during campaigns

<sup>14</sup>*Ibid.*, Amrah, 13 Jul. 1855, p.787.

<sup>15</sup>*Ibid.*, Bahrapur, 14 Jul. 1855, p.787.

<sup>16</sup>*Ibid.*, 5 Sravana, 1262 B.S., 20 Jul. 1855.

<sup>17</sup>*Ibid.*, 20 Jul. 1855, p. 789.

against the Santals. A Bardhaman paper cited by Samvad Bhaskar complained that such requisitions were not limited to the "low jatis only ... even the bhadralok residents of Bardhaman were being harassed by the need of the government to hire coolies ... even Brahmins were being caught by the Company officials and forced to be a part of the begar [forced labour] forces".<sup>18</sup>

However, after the suppression of the rebellion, there was a shocked response from Beerbhoom at the harsh treatment meted out to a batch of Santal prisoners. The Lieutenant-Governor's notice was drawn to the misfortunes of the prisoners, who were being transferred from Damin-i-Koh to a prison in Beerbhoom, as the writer was convinced that the magistrate, in giving effect to orders, had exceeded his instructions. Torturing the prisoners could never be a part of the government's policy as "the British Government's mild treatment of even thieves and robbers, and providing them with the cost of food from the treasury was universally known".<sup>19</sup> Therefore the brutal treatment exhibited towards the Santal prisoners was felt to be contrary to the spirit of the rule of law. A witness described their pathetic condition:

These Santhals, 50 in number, were fettered, handcuffed and attached to a long chain immediately after arrest; they were not given anything to eat and drink for two days after arrest, but were hauled on the chain to the prison in Beerbhoom from Damini-Koh. Some of them had fallen, but were pulled along with the rest, and many were bleeding from the sores caused by the handcuffs and fetters. An old man died on the way ... When finally they were brought in front of Beerbhoom prison, they could not walk in, but were whipped and pulled inside the jail by the soldiers.<sup>20</sup>

There was thus an ambiguity in the response of the bhadralok to the Santal rebellion. While at one level there was fear and apprehension about the savagery of the rebellion, especially where their propertied suffered or was threatened, at

<sup>18</sup>Ibid., Janghipur, 3 Sravana, pp.791-92, letter from a "scared citizen".

<sup>19</sup>Samvad Bhaskar, Editorial, 25 Nov. 1856, no. 95, in Binoy Ghosh (ed.), Samayik Patre Banglar Samajchitra 1840-1905, Vol.3, Calcutta, Jul. 1964, p.339.

<sup>20</sup>Ibid., p. 339.

another level, there was an appreciation of the Santals as a "strong race", who had rightly protested against injustice and torture. The Santals being dragged in chains to the jail aroused pity in some observers, though this could by no means be seen as a concern with the actual functioning of the jail, as the fate of the prisoners, once they entered the jail, remained unknown.<sup>21</sup>

Two years after the Santal uprising, the Rebellion of 1857 showed the Bengali bhadralok to be completely on the side of the colonial government and the rule of law, without even the ambiguity that characterised the bhadralok response to the Santal rebellion in 1854-56. The sepoy, clad in red, represented to the middle-class Bengali the ultimate disruptive force, harmful to the preservation of peace and property alike.<sup>22</sup> The real fear of the bhadralok was demonstrated in many incidents reported from all over Bengal. The houses of Bengalis in troubled areas exhibited placards bearing the announcement "This house belongs to one Mukherjee, very loyal subject. Please not to molest".<sup>23</sup> Panic was widespread, even in districts which were not directly affected by the Rebellion. Rajnarayan Basu, "the grandfather of Indian nationalism", exemplified the panic of the middle classes. Then the headmaster in the Zilla School of Midnapore, he and his colleagues wore "dhotis underneath their trousers so that they could appear before the sepoys in their Indian dress ... Rajnarayan's sleep at this time was often disturbed by frightening dreams in which he saw sepoys in red uniforms".<sup>24</sup> There was an equal concern amongst the bhadralok to preserve "civil order and tranquillity", which significantly demonstrates the inroads the British concept of the rule of law had made into the psyche of the bhadralok.

The colonial government's attempt to transpose the figure of the "sepoy" on to the familiar figure of the dacoit, and thereby single out the "disorderly" elements and root them out by means of exemplary punishments met with a positive response

<sup>21</sup>*Ibid.*, p.339.

<sup>22</sup>Neelmani Mukherjee, *The Life and Time of a Bengal Zamindar : Jaykrishna Mukherjee of Uttarpara, 1808 - 1888*, Calcutta, 1975, p. 190.

<sup>23</sup>*Ibid.*, p. 195.

<sup>24</sup>*Ibid.*, p.195.

from the bhadralok, who had anyway combined the identity of the sepoy with that of a marauder, from whom property and lives were not safe. A petition, headed by Joykrishna Mukherjee, and the zamindars, talukdars and other inhabitants of Uttarpara on 18 June, 1857, to the Magistrate of Hooghly, considered the disbanded sepoys who lingered on in the Bengal Presidency a "menace" and a constant threat to the propertied classes. The loyalty of the retainers of the zamindars had also become suspect, since the retainers had family-members amongst the disbanded sepoys, and thus could not be relied on during times of crises. Interestingly, it was proposed to train the strong-arm men of the zamindars drawn from the Aguris, Goalas, Bagdis and Doms.<sup>25</sup> It is important to note that the very men who were put forward in this way by the zamindars as warlike battalions capable of military functions, formed the bulk of the highly-suspected category of "law-breakers" in the countryside. This, then, is a glimpse of a complex network of social relations, with the zamindar controlling the criminals, and choosing to take objection to "plunder" by other criminals (the sepoys) who did not belong to his own entourage, and to prevent this, the zamindar was prepared to take the necessary steps in harmony with the colonial government. At this level, then, the maintenance of law and order established by the colonial government and the interests of the landed elite were clearly congruent.

The firm action taken by the government to put down the rebellion was lauded in all the Bengali newspapers. The editor of Sambad Bhaskar on the 20 June 1857, declared :

Last Wednesday, a ship came in from the north ... European soldiers had on board 500 sepoys, with handcuffs on their hands and fetters on their feet ... the British Government has commanded the soldiers and its loyal subjects to capture any rebels, after first handcuffing and fettering them, and then bring them in for justice ... If they cannot be brought, then the nearest prison would house them immediately ... last Wednesday, there

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<sup>25</sup>Ibid., pp.193-94.

was a great crowd to observe the manacled and leg-shackled sepoy being brought into the town .... [Calcutta]<sup>26</sup>

It is evident from this that even the spectacle of the sepoy being brought into the harbour in handcuffs and fetters did not alert the middle-class consciousness as to the distant reality of prison life, or to the implications of the jails and the penalties following the armed revolt. 1857-58 serves as an example of the indifference of the middle classes to the nature and consequences of punitive measures employed by the colonial administration. To them summary executions, transportation overseas, or imprisonment in Indian jails, seemed to be the natural and justifiable consequence of any form of overt political dissent. The identification of the sepoy as dangerous and criminal had become so complete that Hutum Pyanchar Naksha made the matter-of-fact statement: "Most of the Sepoys in the Mutiny, either perished on the scaffold, at the mouth of the canon or on the edge of the sword. The rest were pardoned".<sup>27</sup> The deep fear and suspicion that both the Santal and the sepoy evoked among the propertied classes in the 1850s reveal not only a concern for the preservation of property, but also suggest that the propertied classes perceived these figures to be "outsiders" disrupting law and order, and therefore ensured their unpopularity and isolation.

It was widely understood that the government could pardon crimes that had no connection with the 1857 rebellion and thus the petitions presented to the government for pardons attempted to prove total non-complicity in the late rebellion, even if there had been some transgression of the law. This belief was engendered by the government's distinction between what was a crime and therefore punishable and what was, given the unusual circumstances, indefensible by law. The administration was trying to distinguish between the act of rebellion and ordinary crime, making a clear distinction between personal crimes and crimes against the state in the disturbed areas to drive a wedge firmly between the villagers, who had

<sup>26</sup> Samvad Bhaskar, 20 June, 1857, no. 30, Samayik Patre Banglaar Samajchitra, 1840-1905, III, p. 392.

<sup>27</sup> Kaliprasanna Sinha, Hutum Pyanchar Naksha, (ed.) Arun Nag, (1861, 1868), Calcutta, Ashwin, 1393, B.S., 1991, pp. 120, 135.



participated in "unlawful activity", and the sepoy themselves. The government "hoped that such measures as these would detach from the side of the insurgents a considerable portion of their strength, and at the same time ensure, as far as possible, the punishment of none but the rebel sepoy and other generally heinous offenders".<sup>28</sup> As a part of the same policy, different weight was attached to the murder of British officers, or British-born subjects and Indian subjects, for it was impracticable to bring to justice all those guilty of taking lives. It was of primary importance to decide what was distinctly an act of rebellion, and what could have been a settling of old scores. Therefore, murder of Indians, or looting for "illegal gain" under the circumstances were not termed "an act of rebellion".<sup>29</sup> At the same time, the government took a tough stance on the infringement of law and order in undisturbed districts, obviously bent on preserving a semblance of normalcy there. In a demonstration of its position, the administration in 1858-59 firmly rejected the appeal of a rioter in an undisturbed area, who had been given a sentence of ten years' imprisonment on the following principle:

riots originating in an attempt to regain or maintain possession of a disputed lease-hold, of tenement situated in a part of the country where the rebellion had not reached and when it does not appear that the inhabitants of that locality and its neighbours imbibed any treasonable infection.<sup>30</sup>

In Bhagalpur, in yet another petition, Bahadur Dooley and Nobar Dooley pleaded for clemency for their sons, Priag and Buldeo Dooley, both of whom had been sentenced by the Judge of Bhagalpur to transportation for life to the Andamans for having aided the rebels. They declared that the information laid against them had been totally false. There was even an attempt to prove that the "crime" was merely a property dispute, and purely personal, thereby demonstrating the public awareness

<sup>28</sup>A.R. Young, Sec. to GOB, to Sec. to GOI, 7 Oct. 1858, Home (Public), 21 Jan. 1859, 150-151, 3659, p. 27, National Archives of India, (hereafter NAI).

<sup>29</sup>Magistrate of Shahabad, to the Commissioner of the Circuit, Patna, 23 Sep. 1858, Home (Public), 146, p. 40, NAI.

<sup>30</sup>Petition, Jee Nauth Jha, Bansee Jha, and Sheikh Kadi, Tirhoot, 43, BJP, Home Judicial, 7 Jan to 24 Jun. 1859, WBSA.

of the government's bias in demarcating between personal vendetta and political dissent.<sup>31</sup>

There was yet another class of petition that clearly reveals the attitude of "respectable men" regarding criminal activities during this troubled period. Identification with the interests of colonial rule, even active participation in suppressing the rebellion, induced in a certain class of men a feeling of "belonging" to the ruling race. They obviously felt that because of the help they had rendered the colonial administration during the rebellion they had free licence to settle scores against each other. In effect, they considered themselves above the law they had helped re-establish. This attitude is exemplified in the petitions of two men, Kazi Rumzan Ali and Syad Nujjeemodden, who had helped to preserve "order" in the Chapra station, when the Europeans abandoned it. Significantly, the petition drew attention of the government to the fact that a jail-break had been prevented, the ultimate in help and co-operation towards the government. Equally significantly, the petition enclosed a letter of reference from a European official called Samuells, who had "highly commended" the action of one of them. The reference reflected the "concern" of the colonial bureaucracy at the prospect of the prisoners being set free by the rebels, and therefore the signal service rendered to the state was recognised: "When the station at Chuprah was abandoned by the officials, he [one of the two men] took the management of affairs in his own hands, kept the Nujeeb guard and the people quiet ... it is owing to him that the Jail at Chuprah was not broken, and that criminals of the worst character were not let loose upon the country".<sup>32</sup>

At this point, therefore, the colonial government did grant a certain degree of immunity from punishment to the Indians who had rendered it service, as preventing "criminals of the worst character" from roaming the countryside. Thus the initial sentences of a year's imprisonment and a fine of Rs.3,000 on one and

<sup>31</sup>Petition by Bahadur Dooley and Noobar Dooley, Bhaugulpore, 24 June 1859, 1, Home Judicial Proceeding, 7 June-24 June, 1859, WBSA.

<sup>32</sup>Petition of Kazi Rumzan Ali and Syad Nujjeemoddeen, to the Gov. Gen. of India, 27 May, 1859, 28 & 29, BJP, 7 Jan- 27 June, 1859, WBSA.

six month's imprisonment at the Great Jail of Calcutta, and a fine of Rs.1,500 on the other, imposed by the Supreme Court, were rescinded.

### **The Indigo Rebellion, Neel Darpan, and The Trial of the Reverend Long**

However, imprisonment for breach of the law, regardless of position or caste was beginning to be accepted as a legitimate state action, and the rebellion only reinforced this in the minds of the bhadralok. There was an intense concern for security and so the reaffirmation of "law and order", the catch-phrase of the colonial government, evoked a tremendous response from the bhadralok. The post-rebellion period, despite witnessing mass imprisonment, transportation, and capital punishment, positively asserted the state's right to punish those who threatened its existence. The indigenous elite, approving of the colonial state's assertion of authority through the courts and the jails over the sepoy who represented criminality at this point, did not perceive that coercive state power could be applied to other sections of society guilty of protest or dissent. Thus criticism regarding the administration of the legal and penal institutions was not part of the bhadralok political scene at this juncture. Criticism, such as there was, was directed towards inner social maladies, like polygamy, child marriage, the status of women, the loose morals of the "babus", and the need for their reform. The Bengali intellectuals were not, at this time, actively engaged in opposing the official version of events. ✓

Participation in the maintenance of the law and order process, as *vakils* (lawyers), *mooktears* (lawyers practising in the lower courts), and *darogahs* (police officials) enabled the bhadralok to take on many of the colonial definitions of criminality and the criminal classes as their own. The result was a definition of themselves as a non-criminal class. This self-definition was, however, at various points challenged by the colonial legal process and the penal system. This led to constant evaluation by the bhadralok of their own position vis-a-vis the colonial regime, and by the late nineteenth century a fully-blown, acrimonious debate

between the ruler and the ruled had developed, centring around this apparatus of control. Since it carried the clearly visible connotations of authority and power, the debate quickly assumed a confrontational aspect. We will return to this aspect in Chapter Four of the thesis.

How far the bhadralok were successful in constructing a non-criminal image for themselves is an important point that needs further discussion here. The fact that the bhadralok were concerned about the behaviour of certain members of their class who seriously jeopardised and loosened the morals of their society was important. There were any number of didactic plays that dwelt on the evils of frequenting brothels, of drinking, of having loose morals, of lying, cheating, or indulging in professional malpractices. Such moral aberrations were perceived to lead on to the criminal courts and the jails. There were, therefore, many proscribed forms of behaviour that laid out the moral composition of the individual members of the bhadralok, which would not only help him to be an upright member of society, a "bhalo chheley" or a "good boy", but would also help him to keep clear of the criminal courts and the jails.<sup>33</sup> The colonial legal and penal system thus played a significant part, negatively speaking, in the shaping of the identity of the Bengali bhadralok. This was formed out of the personal interaction of the bhadralok with these twin institutions, which hurt their self-respect, and the conscious avoidance of the courts and jails.

It was only after the indigo rebellion in 1860-62, when the bhadralok had an early taste of the jails, that the concern for prisoners grew apace. The corruption of the police and the alien atmosphere of the courts were satirised in the literature of the 1860s, but escaped extensive comment before that period. There was an intense bhadralok concern to keep themselves as far away from the criminal courts and jails as possible, and the constant inroads the colonial administration made by striking at leading members of the bhadralok, or at the indigenous elite through these institutions, enabled them to focus on the legal and penal institutions as appendages

<sup>33</sup> Jayanta Goswami, *Samajacitre Unabimsa Shatabdira Bangla Prahasan*, Calcutta, 1974.

of colonial control. Thus Partha Chatterjee's concept of a material domain that fed on the political developments and a spiritual domain - the uncolonised interior - is an important point of analysis, though its application is limited to a specific stratum of society, the middle classes. It is also at this juncture that bhadralok ambiguity about the legal and penal institutions can first be located. The rule of law, with its secular ideology and law-enforcing institutions, was necessary for that area of society that was not informed with the moral precepts that made the legal and penal institutions redundant in their application for the bhadralok.

This consciousness of the moral rectitude of the bhadralok had been evolving during the nineteenth century in various ways. The question that has to be asked here is the source of the reverence with which the criminal trials of the nationalists were held 40 to 50 years later, and the sense of martyrdom which the sentences of imprisonment gave them. This thesis contends that there was a gradual build-up of the middle-class discourse which grew around the colonial legal and penal apparatus, which made this transition in attitude possible.

By the 1850s the landed aristocracy's interests were given priority by the indigenous society and the colonial institutions were generally regarded as tools that could be used to further its own interests. The British Indian Association, a political body comprising mainly of zamindars, in 1854 discussed bills like the Affray Bill, or the functioning of the criminal administration in Bengal. This was indicative of their particular field of concern. Some members like Joykrishna Mukherjee were particularly active regarding such issues, as being rich and influential zamindars, these were matters of importance in the management of their estates. The colonial legal and penal system was seen to operate on the upper classes' behalf and the peace of the country, maintenance of law and order, preservation of life and property were seen to coincide with the interests of the bhadralok. As already seen, this can be read in the indignant reaction of the bhadralok during the 1854-56 Santal Rebellion, when their property and lives were seen to be in jeopardy.

It was only during the indigo rebellion in 1860-62, that the question of how "just" the judicial system of the colonial regime actually was, was raised. Only at this juncture were rich and powerful landlords, and lawyers, newspaper editors, prominent members of the indigenous elite, clubbed together as political "dissenters". Along with the ryots, they too were seen to be threatening the interests of the planters, and thereby the two classes became the joint targets of the control network.<sup>34</sup> The free use of the criminal courts and the jails created an awareness of the colonial legal and penal institutions that could be, and were used as weapons.<sup>35</sup> Joykrishna Mukherjee in a pamphlet placed the cultivation of indigo and the concomitant oppressions and injustices inherent in the system squarely within the legal framework. This was a first well-argued exposition of the legal and penal framework being geared to the interests of the Europeans. There was no attempt to connect the "oppressions", however, to the context of colonial rule, and the crimes remained the deeds of individual planters, though there were indications about the direction in which the acrimonious debate of the 1870s would take regarding governmental "injustice".<sup>36</sup>

These injustices perpetrated by the criminal courts and jails were presented in a literary form by the controversial play, Neel Darpan, by Dinabandhu Mitra in 1860, and evoked an immediate reaction from the educated middle classes. As a play, this was not particularly high-quality literature, as pointed out by Ranajit Guha. It achieved fame principally because it had been translated into English, and aroused the ire of the planter lobby, who in their turn brought in a charge of libel against the Reverend James Long as the translator, and this then attracted the attention of the "babus".<sup>37</sup> But the trial and subsequent imprisonment of Long unleashed a critical evaluation of the legal procedures and the penal system to which

<sup>34</sup>Sumit Sarkar, Swadeshi Movement in Bengal, 1903-1908, New Delhi, 1973, pp.24-25.

<sup>35</sup>Amiya Rao and B.G. Rao, The Blue Devil: Indigo and Colonial Bengal, with an English translation of Neel Darpan, Delhi, 1992, pp.65-66, 94. Also see B.B. Kling, The Blue Mutiny. The Indigo Disturbances in Bengal, 1859-1862, Philadelphia, 1966, pp.88-91.

<sup>36</sup> Mukherjee, A Bengal Zamindar, pp.201 - 04.

<sup>37</sup>Ranajit Guha, "Neel - Darpan: The Image of a Peasant Revolt in a Liberal Mirror", Journal of Peasant Studies, 2,1, pp.2-3.

"respectable" people fell victim. This concern was directed primarily at the middle classes, but occasionally shifted to take in the helplessness of the *chhotolok* when caught in the meshes of the courts and the jails. This championship, at one stroke, made the *bhadralok* display liberal-humanitarian principles, and automatically assume the position of the representatives of the "voiceless masses", while at the same time endowed them with considerable political clout.

Central to this chapter is the analysis of the sudden growth of awareness in the 1860s that the law courts and the jails could serve as instruments of oppression even by the government. The Reverend Long's trial and subsequent term of a month's imprisonment was a demonstration of how jealously the colonial administration's interests could be protected by these institutions. That a European cleric was indicted on a charge of sedition for espousing an Indian cause, and imprisoned, held out little hope to the Indians who protested against the forcible planting of indigo. Previous to this, trials of small zamindars and professionals for opposing planters' interests had ended in short jail sentences, but none had revealed as clearly as Long's sentence how closely the colonial government's interests were bound up with the exploitative planters. It needed the jail-sentence of a European to clarify the identity of the colonial government, and to indicate its true nature. This was the inception of the confrontation of the ruler and the ruled and the first focusing of an inchoate dissatisfaction on the actual purpose of the colonial legal and penal institutions, i.e., the control of "natives". The trial of the Reverend Long began a long history of trials and imprisonments of the "big people", or the *borolok*, which made the *bhadralok* examine the structure of the law itself, its prejudices and its relationship with an establishment concerned to use judicial procedures and punishments to preserve its control. The process of assessment can be perceived to be in operation in the memorial sent by the zamindars of Nadia as early as 1853, where they declared in relation to the affrays between the indigo planters and the zamindars, where the zamindars always lost out: "The primary

principle of government viz. that all ranks of people living under the same rule should be subject to the same law is lost sight of in India ...."<sup>38</sup>

The details of the trial of the Reverend Long, as the first trial with a high level of visibility which accompanied such "miscarriages of justice" in the faujdari (criminal) courts, are necessary to demonstrate the overt coercion of the colonial government to suppress dissent. This trial haunted the Bengali bhadralok, along with Nandkumar's hanging in 1776, in the years to come,<sup>39</sup> whenever "injustice" was invoked with reference to the courts and jails, and thus formed an integral part of the collective memory shaping elite national consciousness against alien rule. The trial was most memorable to the bhadralok since it brought home to them that the deployment of the criminal courts and jails was possible against any class of the population, not just to put down rebellion or to isolate criminals from society, but to suppress any dissident voice which the government deemed seditious.

The debate around the legal and penal institutions began with the trial of the Reverend J. Long in a faujdari case, on 24 to 26 July, 1861, in the Supreme Court, on a libel charge. His champions were the Bengali elite, amongst whom were such notable figures as Kali Prasanna Sinha, Raja Pratap Chandra Sinha, Michael Madhusudhan Dutt, Ishwar Chandra Vidyasagar, and Raja Radha Kanta Deb, all of whom were present in court. The costs of the trial were borne by Raja Pratap Chandra Sinha. The prosecution was headed by the editor of the *Englishman*, Mr. Walter Brett, backed by a large number of indigo planters. The sympathy of the Chief Justice, Sir Mordaunt Wells, for the planters' cause was thinly veiled.<sup>40</sup> While summing up, the Chief Justice reiterated the chief charges against Long. Firstly, he had wilfully made public his dislike for the editors of the *Englishman* and the *Harkuru*; and secondly, he had published his personal dislike for the

<sup>38</sup>Memorial of the zamindars, vakils, muktiars, of the district of Nadia, to the Hon'ble Halliday, Lieutenant-Governor of Bengal, 25 Sep. 1854, from the Commissioner of Circuit, Nadia, 120, BJP, 26 Oct. 1854, IOL.

<sup>39</sup>H. Beveridge, "Warren Hastings in Lower Bengal", *Calcutta Review* No. CXXXII, Jan-June, 1878, Part II, p.310. Also H. Beveridge, *The Trial of Maharaja Nanda Kumar: A Narrative of a Judicial Murder*, Calcutta, 1886, pp. 282 - 286.

<sup>40</sup>Amar Dutta, *Padri Long*, Calcutta, 1976.



planters of Lower Bengal. Since he was found guilty of personal and class hatred, he was given a month's simple imprisonment and fined a sum of Rs.1,000, upon the non-payment of which he had to continue serving the sentence of imprisonment.

Kali Prasanna Sinha offered to pay the fine. There was a mammoth signature campaign, arranged by the efforts of Raja Pratap Chandra Sinha against the sentence. Long also received a congratulatory note signed by more than 20,000 propertied Indians. This agitation for the reversal of a sentence, on however limited a scale, and the concerted attempt to mobilise public opinion, was very significant, though it was discouraged by the missionaries, who were against further politicisation of the issue.<sup>41</sup> This was the first political imprisonment to be politicised by the Bengali bhadralok and set a pattern for the agitations that were to follow similar trials and the subsequent imprisonment of upper middle-class Bengali leaders. A precedent was set in 1861 that prepared the path for future agitation. It also revealed to the educated Bengali how thin the wall was that divided middle-class society from the jail. It only needed the wrong political opinion or any action decried by the government.

That the jail was for the first time considered an appropriate arena for political action was further made clear by the reception given to Long after his release from prison. Even though Long actively discouraged a commemoration meeting for political reasons, there was no stopping the 200 to 300 strong crowd which gathered outside the jail gates on 28 August 1861, the day of his release. This was indeed a new development compared to the hundreds of people who had gathered near the quay in 1859 to witness rebel sepoys being brought in to meet their doom on the gallows, to be incarcerated in the jails or transported to the Andamans. The indigo rebellion and Long's trial brought home to the middle classes yet another indication of how effectively the colonial government could use the institutions it had introduced to defend its position as the ruling power, and the rights of the planters, who identified with it, and were identified as part of it.

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<sup>41</sup>Rao and Rao, The Blue Devils, pp.124 - 26.

In the 1860s, the reports in the vernacular newspapers, after Long's imprisonment, reflected a certain feeling of inevitability about imprisonment if even zamindars fell foul of the combined interests of the planters and government. Thus *Bengalee* in 1863 brought to light an instance of two rich and influential zamindars laid low. Gadadhar Banerjee and Mohesh Chunder Banerjee were the richest zamindars in the west of Burdwan district, and were the head officers of an indigo planter, but they were not immune from arrest, trial and imprisonment. Despite "the sound argument and thundering eloquence of the learned Barrister", Mr. Money, one of them was sentenced to rigorous imprisonment for a fortnight and the other to a month. But what was alarming was the immediate execution of the sentence, for "No sooner was the sentence passed than the unfortunate prisoners were dragged into jail". However, "fortunately for the fallen Zemindars", an appeal to the High Court secured their release on a bail of "Rs. 1,000, from each of them, as security".<sup>42</sup>

Though the *etor lok* (the *chhotolok*) had been previously exposed to the vicissitudes of the system, since they were far more vulnerable, their perception of the inherent injustice of the legal and penal institutions could not change the course of the *bhadralok* discourse, for they had been successfully reduced to the level of a homogenous mass of the "lowly", who only assumed importance when their problems illustrated a point the middle-class discourse was trying to put across to the British, while contending for a favourable position vis-a-vis the colonial government. It was only as the *bhadralok* were placed in the analogous position of the *chhotolok*, in courts and in jails, that the first articulate exposition commenced to flow from this class of the Bengali society. The *bhadralok* perception of the convergence of *bhadralok-chhotolok* interest, drew the *chhotolok* into the same orbit as the *bhadralok* in a way that the sepoy's inclusion was impossible, for the upper classes in 1857 could dissociate themselves from the rebellion and dismiss it as the act of "Sepoy Khyapeche" (sepoys gone mad).<sup>43</sup> As the late 1860s saw the

<sup>42</sup>*Bengalee*, 9 Sep. 1863, p.283.

<sup>43</sup>Sinha, *Hutom Pyanchar Naksha*, p.132, Also see editor (Naksha), A.Nag's footnote 372, p.135.

growing political maturity of the bhadralok the penal and legal aspects of colonial rule came together in a critique of British rule, though still with a lingering faith in its institutions. A gradual realisation of this aspect of political subjugation by the bhadralok, retrieved the figure of the sepoy from the criminal background, a position in which the sepoy had been thrust by the colonial and bhadralok discourse in the late 1850s, and placed him squarely in the position of victim of the control apparatus of an alien government.

### **The Ambiguity**

A distinction between political and ordinary imprisonment had begun in 1861 with Long's imprisonment. Political imprisonment meant to have unacceptable political views, to penalise which the government took recourse to the courts and jails. Yet paradoxically the colonial discourse remained dominant regarding the commission of "crimes", and their consequent punishments, for the definition of which the Bengali middle classes relied heavily on the colonial government. The disillusionment with the legal system that began to be expressed in the 1860s was a transitional phase, and marked an ambiguous attitude about the penal and legal institutions. There was a deeply critical and cynical attitude towards the courts, with their formal requirements of identification, evidence, proof, and "fair trials", yet the bhadralok were unable to break out of the parameters set by the colonial discourse on the legal and penal institutions.

All these points were taken up individually in a book written in 1864, called Jal Pratapchandra (False Pratapchandra), where the author, Sanjeeb Chandra Chattopadhyay, examined the actual manner in which the legal system worked. Thus he exposed the subversion of the legal institutions by the rural elite to "manufacture" evidence to prove the identity of a false claimant to a zamindari for furthering his self-interest. This exposition was taken from a real incident which received wide publicity among the bhadralok. In the social satire, Hutum Pyanchar Naksha, Pratapchand, or Pratapchandra, the supposed Raja of Burdwan, whose

identity was fiercely contested after he came back to claim his patrimony in 1835 after an absence of fourteen years, received more than a glancing reference. The current zamindar of Burdwan attempted to prove that the claimant was a fraud. Pratapchandra was arrested at Bankura, where he was jailed without trial for eight months, and then in a subsequent trial he was given a further sentence of imprisonment for six months. He appealed to the Supreme Court, and attempted to be present with his witnesses for the hearing in Burdwan. But en route eighteen of his people were murdered and Pratapchandra himself evaded arrest for a while, but was finally apprehended and made to stand trial.

The sympathy for Pratapchandra, as the rightful claimant to the zamindari, brought thousands of people to the court. But Dwarakanath Tagore and a few other influential men as witnesses for the prosecution ensured the dismissal of Pratapchand's claim and a three year sentence for him, despite the identification of Pratapchandra by Dr. Scott and David Hare. This trial was cited in the 1860s to prove the ineffectiveness of the colonial government's institutions, where men of influence and power could manipulate its provisions, and create a body of evidence to support false trials. Kali Prasanna Sinha remarked: "Suddenly it was heard that through the hair-splitting judgement of the Supreme Court, Pratapchandra had turned into a 'fraud'." <sup>44</sup>

At this juncture in the evolution of middle-class discourse, there were no attempts to come to grips with the nature of colonial rule as such. The magistrates and judges were perceived to be foreign, without knowledge of the customs of the country, and therefore could be manoeuvred into accepting the version of the powerful and the influential: since this section of Bengali society had quickly learnt the language of the courts and the implications of being able to get rid of enemies for a number of years in a government jail, they could put up convincing cases for themselves. The "rajpurush" or the English ruler connived at such legal manoeuvres, even if convinced of the falsification of a case, since such rural politics

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<sup>44</sup>Ibid., p.125, Also Nag's footnotes 124 , 125 in ibid.

had no bearing upon the law and order situation. One zamindar was the same as another. Thus, while the government was accused of turning a blind eye to the failure of the law-courts to dispense even-handed justice, there was no strident observation made on the nature of colonial rule.

At the other end of the spectrum, there were expressions by the bhadralok of complete satisfaction with the legal and penal institutions. But the satisfaction was mainly for the principles which underlay the judicial procedures and jail sentences. Here a certain section of bhadralok opinion showed itself in the capacity of a student, prepared to learn from a technically and institutionally advanced nation. A typical example of such a profession of approval can be seen in a poem written in 1869, and rendered deliberately naive since the author posed as a twelve-year old, possibly to contrast the administrative innovations of the colonial administration favourably. Unstintingly uncritical, the poem was called appropriately enough, Dhanya Ingrej Raja or "The English Ruler be Praised". It reflected many of the commonly-held opinions of the bhadralok at this juncture.

They've established a place called the "jail",  
 Apprehended criminals are sent there without fail;  
 In various ways the Indian subjects are pleased,  
 No one's ever hurt, problems are eased.  
 But if taken at fault, culprits are punished justly,  
 For just punishment the English cannot be accused unfairly.  
 Thus if any person has committed a crime,  
 He is judged accordingly and made to do time.  
 If someone hurts or harms another,  
 Or takes goods in ways not "proper"  
 He is judged by the "rule of law",  
 And shut behind the prison-door.  
 The English are unlike our other kings;  
 They deal out justice, and are not steeped in worldly things

The English are not like that at all,  
 Complaints are dealt with in courts of law.  
 If the lower courts grope in some foggy affair,  
 Or if the Court's decision is deemed unfair  
 The path is open to higher courts,  
 And the right to "appeal" is a matter of course.  
 Appeals can travel up the legal hierarchy,  
 Straight to England, thence to the Queen.<sup>45</sup>

In spite of the Indigo Rebellion, and contrary to the plainly demonstrated links between the legal and penal institutions and the colonial government during the unrest, there was, then, a strand of discourse, that was not just loyal, but took the liberal principles professed by the colonial government in an uncritical spirit. There was a belief in the efficacy of the legal procedure and the penal system, which handed out condign punishment to the malefactor who had taken goods improperly, or had injured or harmed another person. Despite the cynicism of a section of the educated elite regarding the control apparatus, there was still a faith in the functioning of the institutions which the experience of the 1860s had not eradicated. At the close of the decade there could be unconditional support of the colonial government's efforts to contain crime within the framework of the "rule of law". The introduction of the Indian Penal Code in 1861 and the Criminal Procedure Code in 1862 therefore had the implicit support of the Bengali middle classes - qualified by certain groups, but approved unconditionally by others.

The 1860s marked the maturing of bhadralok discourse about the nature of colonial rule. The decade witnessed many administrative changes meant to enhance the colonial government's control over the indigenous society. While the poem quoted above signified assent, there was another strand that was critical of the reforms introduced. The vernacular papers weighed the reforms judicially, revealing how the police reforms, the jail reforms, and the passing of new laws all came

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<sup>45</sup>Annadacharan Das, Dhanya Ingrej Raja, (Calcutta, 1869), Barisal, 1877.

under the appraisal of the educated babus. It was possibly a period of self-education. The bhadralok were trying to understand the nature of the government that was ruling over them by trying to take stock of the many reports the colonial administration published, the "open" quality of justice handed out in the courts, and the visible institutions of punishment, where "wrong-doers" were despatched for a fixed term. The formation of the discourse which evolved around these institutions was aided by a number of developments which took place in the 1860s, thereby adding to the body of knowledge that was necessary for comprehending the manner in which the penal and legal machinery worked. The racial antagonism between the ruler and the ruled had not yet made its appearance in any significantly acrimonious form, even though the disparity in judgement in the criminal law-courts had been noticed by the educated elite.

Injustices perceived in the criminal courts and jails were seen principally to emanate from the zamindar, as he was the immediate focus of authority. He was responsible for many false imprisonments, riots and false criminal cases. The police were recognised as part of the zamindar's army, and, as such, feared. Colonial rule at this point, had to see that justice was done, and to check the oppression by the police and magistrates, and also curb the zamindar's power over them. Bankimchandra's essay, "Bangadesher Krishak", also made the links of the chain of events leading to the imprisonment of a peasant in the attempt to defend his land from the zamindar in a court of law quite clear.<sup>46</sup> Apart from such a specific case, the writer also mentioned the zamindar stealing all the eetar lok's cattle, and in general stepping outside the law to curb his ryots. In a more extreme case, demonstrating the oppressive power of the landlord, a Calcutta zamindar turned even his imprisonment to account. He demanded that his ryots should pay for his "bail", as well as for the fine he would have to pay to get his sentence of "labour" commuted. He actually charged his ryots to pay him a tax called garod selami

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<sup>46</sup>Bankimchandra Chattopadhyay, "Bangadesher Krishak", Vigyan Rahasya, Samya, Bibidh Prabandha, Calcutta, Aashar, 1346 B.S. (1939), pp.243 - 53.

(prison tax), and the ryots had to continue paying it even after the release of the landlord.<sup>47</sup>

### **Bhadralok Exposure to the Courts and Jails**

The late 1850s and 1860s established theoretically the legal and penal institutions as the levelling weapons of the English. The Indian Penal Code and the Criminal Procedure Code, drawn up on completely secular lines, treated the rich and the poor, regardless of position, as equal in the eyes of the law. Prison discipline, too, had been refashioned along similar lines, as the annual jail reports demonstrated. Thus even though the zamindars could manipulate the system to their advantage, it was the boast of the British that a poor subject could seek legal redress against oppression by a powerful zamindar. After the rebellion of 1857, the colonial government attempted to convince the educated that impartial judgement was only possible under British rule.

Many notables of the Bengali community were tried and imprisoned by the legal process. In 1858 Joykrishna Mukherjee was accused of the abduction of a tenant called Madan De by Madan's wife. Joykrishna, in his defence, declared that the charge was a conspiracy by his ryots, who were annoyed about the forcible resumption of tax-free lands (brahmattor) by Joykrishna.<sup>48</sup> In spite of his efforts, Joykrishna was found guilty in 1859, and sentenced by the District Magistrate of Howrah in 1859 to four months' imprisonment with hard labour, the latter commutable upon the payment of a fine of Rs. 200. The zamindar appealed, but E. Latour, the Sessions Judge of 24 Parganas, decided against him. Joykrishna's imprisonment in Alipur Jail caused a great sensation amongst the planters, who disliked the zamindar because of his bold criticisms of indigo cultivation. Sections of the bhadralok were also pleased because Joykrishna was known to be an oppressive landlord, who resorted to crimes like the illegal confinement of his

<sup>47</sup>Palligramasthya Prajadiger Abasthya", Srabana, 1772 Saka, No. 84, in Samaik Patre Banglar Samaj Chitra, vol.2, see footnote, p.124.

<sup>48</sup> Sinha, Hutom Pyanchar Naksha, see Nag's footnote no. 326, p. 120.



tenants and ryots in order to keep them under control.<sup>49</sup>The response to the sentence was therefore one of jubilation and ridicule. Satirical verses were composed by "city-wags", who dwelt on the discomforts Joykrishna would suffer in Alipur jail:

What misfortunes does Jaykeshta suffer this winter,  
He has crawled into rough blankets, discarding his shawls and  
*jamiars* [woollen garment].<sup>50</sup>

Kali Prasanna Sinha's work, Hutum Pyanchar Naksha, also contains a lampoon on Joykrishna Mukherjee, where the kaviwalas sang publicly about the zamindar's discomfiture:

You come home repeatedly after winning cases...  
You must be contented, since you are lying on rough blankets,  
[serve you right]  
you used to take *brahmattor*, *debottor* [tax-free lands] forcibly.  
Now the decision is against you, your confidence in yourself is  
broken, so much *zoolum* will not be taken  
The laws of the penal code has broken the might of the son of  
Mukherjee,  
Illegality has been destroyed, wickedness has been reduced to ashes.  
Under the Queen, the subjects will be trouble-free.  
The destroyer of Kamsa [the oppressive brother of Devaki who  
imprisoned his own sister] Latour has come to the district.  
Now illegal confinements, arrests, riots, faujdari cases are out.<sup>51</sup>

However, Joykrishna was finally vindicated in the Nizamut Adalat, since the judge found the evidence insufficient for a commission. By then Joykrishna had already spent forty-three days in prison. The Hindoo Patriot, a pro-landlord paper, called it an "honourable acquittal".

<sup>49</sup>Mukherjee, A Bengal Zamindar, p. 209.

<sup>50</sup>Sinha, Naksha, footnote no. 326, p. 120. These songs were sung in the houses of notables publicly during the festivities in October, to drum-beats, when there were big gatherings. One such occasion is described in the Naksha, pp.106-07.

<sup>51</sup>Sinha, Naksha, pp.106-07, also see Nag's footnotes on pp.119 - 20.

There was also an attempt by the newspaper, to place the case in a depersonalised perspective and state that a man of Joykrishna's means could afford to pay an enormous sum of money to fight a case in court, which would have been impossible for people of moderate means. In this context, the suitability of such a judicial procedure was questioned by both the Hindoo Patriot and the Dacca News, which meant that the case of Joykrishna was not confined to Calcutta and the mofussil. Moreover, it was felt that the system could be mobilised on false charges with impunity against influential men who had the means to fight back, but could prove ruinous, financially and in terms of reputation, for lesser men. Joykrishna himself acknowledged that the expenses he had incurred in moving the case from the lower courts, through to the Nizamut Adalat would have ruined a man of "ordinary means".<sup>52</sup> It was acknowledged that fighting court-cases involved heavy expenditure.

But expense was no deterrence, and the courts were therefore frequently used as weapons against hated rivals. There was also evidence that the vindication of the "rule of law", which the zamindars violated with impunity, had the approval of the bhadralok. Newspapers favouring landowners, like the Hindoo Patriot, stood against such imprisonments of rich zamindars like Joykrishna, but then, Joykrishna also had a reputation of being rigidly honest, though harsh and oppressive to his ryots. This bias is clear in another case, when the Zamindar of Taki, Mathuranath Munshi, suffered the same fate as Joykrishna Mukherjee. He was asked to depose in the Lower Court, and Mathuranath appealed to Latour to declare the deposition unnecessary, but Latour rejected the appeal. However, the High Court upheld the appeal, much to the expressed delight of the Hindoo Patriot.<sup>53</sup>

The trials of known influential "criminals" and their sentences actually contributed to the credibility and acceptance by the Bengali middle classes of colonial legal and penal institutions. Hutom identified many such rich and powerful

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<sup>52</sup>Mukherjee, A Bengal Zamindar, pp. 210 - 14.

<sup>53</sup>Sinha, Naksha, footnote 327, citing Hindoo Patriot, 5 May, 1859, p.120.

people who had been brought low by the penal machinery. One such personality to be lampooned was a zamindar with extensive lands in Shantipur, Umesh Chandra Ray, whom Sinha satirically used as a reference point for fraudulence - "dharibajite Umesh" or "fraudulence and Umesh go together".<sup>54</sup> Umesh Chandra Ray, better known as "Motibabu", had a reputation of being able to turn the colonial institutions of control to very good account.<sup>55</sup> The Hindoo Patriot stigmatised him as the cause of the ruin of any unwary person who fell in his way.<sup>56</sup> The zamindars who were famed for dishonesty and fraud thus incurred the displeasure of a pro-landlord newspaper like the Hindoo Patriot as well. It condemned the number of cases that Umesh Chandra had pending "from that of the Moonsiff to the highest appellate tribunal the Sudder Dewany and the Privy Council", while "the records of the Criminal Courts [bore] abundant proofs of his having been obliged to stand trial at their bar". His "litigiousness and chicanery" made him the terror of all the judicial and criminal officers of his district.<sup>57</sup>

The sentence of imprisonment passed on him by Sir Mordaunt Wells for bringing a false criminal case against a rich merchant of Shantipur brought the career of Umesh Chandra to a close, since he subsequently died in jail while still serving his sentence. The Hindoo Patriot, echoing the sentiment of Mordaunt Wells, who felt "sorry in having had to substitute only three years imprisonment in the place of transporting him for seven years", also observed the exemplary nature of the sentence: "we are sure that one or two more examples of this kind will clear our country of such unscrupulous characters who carry on a systematic course of cheating and oppression through the forms of the law".<sup>58</sup>

At this point, therefore, there was a fair degree of consensus among the middle-classes towards the administrative definitions of the "criminal classes".

<sup>54</sup>Ibid., p. 253, Also see footnote 587, pp. 253 - 55.

<sup>55</sup>Girish Chandra Basu, Sekaler Darogar Kahini, Introduction, Alok Roy, p.13, referring to Umeshchandra's running feud with the Deputy Magistrate Ishwar Chandra Ghosal. It was the District Magistrate who could not win in the battle of wit.

<sup>56</sup>Sinha, Naksha, footnote 587, pp.254 -55, citing Hindoo Patriot, 26 Dec. 1860.

<sup>57</sup>Ibid., p.257. Also see Nag's footnote 587, p. 255.

<sup>58</sup>Ibid., footnote, 587, p.255.

Bhadralok criminals were few in number, but received a lot of public attention for having achieved this mark of distinction. The colonial administration determined who went to jail, and the bhadralok at this point did not dispute the eligibility of the jail-goers. There were other cases that met with the wholehearted approval of the bhadralok, as the satirical Hutom mentions. In fact, there is a strong sense of "rightness" in the way that the courts upheld "justice" by punishing transgressors who deliberately took advantage of legal provisions for selfish gains or motives of revenge. This can be seen in Hindoo Patriot, which held a positive view of the efficacy of the jail as an institution which could bring corrupt zamindars to heel. In fact, it called for a few further arrests of similar men in order to exemplify the "bad end" to which oppressors inevitably came to. This condemnation, however turned on the perceived difference between a rigid moralist like Joykrishna, who filled the prisons with defaulting ryots and tenants, yet who was honest in his dealings with the members of his own class, while the dharibaj Umesh did not maintain such a fine distinction, but cheated all, regardless of class.

However, at the same time, the death of Umesh Chandra before his three year sentence came to an end also held up a grim example of how terrible the government jails were. Ascription of these deaths of "babus" directly to jail discipline and the work exacted in jails became a part of the bhadralok discourse which evaluated the harsh functioning of the courts and jails.

There was another group of "criminals" for whom the bhadralok had no compassion when they went to jail. Frauds and cheats, receiving "the right lesson" either with a sound beating or by getting a jail sentence, inspired taunts and comments in the newspapers, and literature of the period.<sup>59</sup> Some received condign punishment in courts. Sinha recounted the discomfiture of a Muslim sorcerer, Hussain Khan, who tried to capture public imagination by pretending he had a "genie" willing to obey his slightest wish.

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<sup>59</sup>Ibid., p.461.

Gradually Hussain Khan started getting caught at one or two places - he would get a tap or two, or a twisted ear, or even a drubbing ... by the very people he had charmed with his magical powers ... he finally found his way into the Government guest house - Hussain Khan went to jail.<sup>60</sup>

Other notables, like Jyotindra Mohan Thakur, and Ramgopal Ghosh had also seen this man perform marvels. Pearychand Mitra wrote about this character, and his account too bore out Sinha's anecdote. Arun Nag, who collected data to match the references Kaliprasanna Sinha made in the satire, stated in a brief character sketch of Hossain Khan, that the magician probably died in jail in the early 1860s.<sup>61</sup> Again, in another much publicised case of fraud, the conservative newspaper, *Bengalee*, spoke in the same tones of disapprobation about "the villainy of one Pran Kristo Bose, a writer in the Benares Bank". The sentence of "five years with hard labour and chains" given by the judge for "having fraudulently embezzled Government money" was approved wholeheartedly, for such sentences served "as a warning to other souls".<sup>62</sup>

There was an increasing *bhadralok* familiarity with the courts and the jails, a predicament that the indigo rebellion had first brought to light. During the 1860s, there were also a number of criminal prosecutions of leading Bengali figures, ending in imprisonment that brought home to the *bhadralok* that no-one was above the law. Jail sentences brought infamy to some leaders of society, like Joykrishna Mukherjee. But he was not prepared to accept the conditions that were prevalent in Alipur Jail, and demanded privileges that befitted "Indian men of rank like him" during his first imprisonment, especially when he found "that Indian prisoners were denied the amenities regarding food and bed enjoyed exclusively by Europeans". Thus, "as a result of this move by Joykrishna jail superintendants were empowered to allow these facilities in special cases".<sup>63</sup> He also published a criticism of the

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<sup>60</sup>*Ibid.*, p.179.

<sup>61</sup>*Ibid.*, see footnote, 461, p.179.

<sup>62</sup>*Bengalee*, 2 Oct. 1863, p.331.

<sup>63</sup> Mukherjee, *A Bengal Zamindar*, p. 212.

criminal administration in the mofussil in his pamphlet entitled "A Few Notes on a Recent Trial Illustrative of Mofussil Judicature" where he contended that the fact that he was a zamindar was, "in Mr. Latour's eyes quite crime enough",<sup>64</sup> while ordinary men still had hopes of getting a just hearing. Joykrishna therefore, used the trial to further the interests of his class, and was prepared to dismiss "the cost, annoyance, personal suffering, and at one time the apparent disgrace" if it meant "changes in the system of dispensation of justice [so called] in the mofussil, as may render their recurrence more rare".<sup>65</sup> The fact that he had undergone what he had criticised in the Affray Bill and other similar criminal jurisdiction lent weight to his views to members of his class.

After his release from prison, Joykrishna Mukherjee was involved in a string of civil and criminal litigations brought against him or even forced upon him by his relatives. The charges were multifarious, including crimes like "forgery, perjury, common assault, affrays, armed clashes of clubmen and spearmen, arson, loot, dacoity and murder".<sup>66</sup> Finally, the clashes terminated in the second trial of Jaykrishna on a charge of forgery, three years after his first imprisonment. The Magistrate of Serampore, J. P. Grant, committed him to stand trial, and he had to be admitted to a bail of Rs. 50,000. He was sentenced to five years' imprisonment with labour, the labour commutable, with regard to his "age and social position", to a fine of Rs.10,000. This time the Anglo-Indian press, too, was critical of the evidence, especially in view of the family feud involved. The vernacular press, the Hindoo Patriot, in particular, was deeply sympathetic to Joykrishna's second prison term in 1862.<sup>67</sup>

Though initially in Hooghly Jail, Joykrishna was transferred to Alipur Jail by the Inspector-General of Jails, at his own request, on 19 April 1862. Ironically, one of the reasons, apart from ill-health, advanced in the request was that many of

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<sup>64</sup>Ibid.

<sup>65</sup>Ibid., p. 215.

<sup>66</sup>Ibid., p.215.

<sup>67</sup>Ibid.,pp.217-19.

his tenants and retainers were "imprisoned in the Hooghly Jail". This was a classic example of the levelling effect of the colonial legal and penal system on the indigenous population. It obviously made Joykrishna uncomfortable, as he was not accustomed to such "equality in the eyes of the law", and he asked for a transfer to Alipur Jail where there were no such prisoners.<sup>68</sup> It was also an example of the impunity with which the ryots could be thrust into the jails, and that too by Joykrishna; yet the inversion of the situation with him on the receiving end, made him anxious to call for drastic changes in the judicial process. Interestingly, after his second conviction, a letter signed by a ryot was published in Bengal Hurkaru on the 21 April 1862, pointing out his unpopularity as an oppressive landlord.<sup>69</sup> The bhadralok therefore showed a mixed response to jail sentences in the 1860s. In Joykrishna's case, in many respects, there was a feeling that the sentence had been justly deserved. To this end a great deal of "shame" (*lajja*) was attached to a prison experience. It was like a public denouncement for infamy. The hardships were also a part of the humiliation, or were perceived to be such by the bhadralok, and this was clearly demonstrated in Joykrishna's case.

A reprieve was granted to Joykrishna, on the recommendation of the Judicial Committee of the Privy Council, which declared that though the Privy Council could not reverse the sentence delivered by an Indian criminal court, they "were conscious that injustice might have been done in this individual case".<sup>70</sup> Joykrishna submitted a petition for pardon, and the leading figures of Calcutta, Raja Radha Kanta Deb, Kalikrishna Deb, Prassanna Kumar Tagore, Pratap Chandra Sinha, Ramanath Tagore, Satyanand Ghosal, and Jatindra Mohan Tagore figured as the chief signatories. The Lieutenant-Governor, Sir Cecil Beadon had to wait for the report which the Chief Justice and the other Judges were preparing. However, there was a division of judicial opinion, seven agreeing to remit the rest of the sentence, and grant Joykrishna "pardon", while six agreed with

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<sup>68</sup>*Ibid.*, pp. 221-22.

<sup>69</sup>*Ibid.*, p. 220.

<sup>70</sup>*Ibid.*, p. 220.

the Chief Justice that he would have to serve the rest of his sentence, for a pardon would have meant that there was "one law for the rich and another for the poor".<sup>71</sup> Disregarding the pending report, Sir Cecil Beadon gave orders for the immediate release of Joykrishna, thus triggering a constitutional crisis, that only ended when the privilege of direct correspondence between the High Court and the Lieutenant-Governor was withdrawn and vested solely in the Government of India, thereby rendering the executive and the judiciary separate. The Bengalee noted the event and felt that the injudicious haste of the Lieutenant-Governor in releasing Joykrishna Mukherjee in 1863, had ignored "the highest tribunal of justice in the land".<sup>72</sup> Thus Joykrishna was indirectly responsible for the Lieutenant-Governor's loss of right to hold correspondence with the High Court, which was vested instead by the Secretary of State in the Government of India.

As seen from this highly publicised trial, a lot of issues were aired by the vernacular press, as well as by the Anglo-Indian press. That zamindars were responsible for the affrays, and other crimes uncondusive to the "maintenance of the peace", was by and large the common consensus. The wielding of so much power through the courts and jails by one class was questioned. Thus, there was a nascent critical attitude to the misuse of the system by the zamindars, which had not at this time embraced the workings of the government institutions. For example, an essay in the *Tattvabodhini Patrika* complained bitterly about the rapacious zamindars who turned the law and order system to their advantage by even "imposing a taxation on crime", and was appropriately called *baaje adaye* or "misappropriated funds". This term, *baaje adaye*, encompassed "many thefts, many quarrels, many abortions!" - as interpreted by the zamindars. Therefore the apprehension of the culprits did not have as its aim "good administration", nor the prevention of misdeeds, but only the collection of fines. Thus "many hundreds of people have paid the zamindar and are living without any fear of retribution from the state".<sup>73</sup>

<sup>71</sup>*Ibid.*, pp. 222-23.

<sup>72</sup>*Bengalee*, 30 Sep. 1863, p. 303.

<sup>73</sup>*Tattvabodhini Patrika*, B. Ghosh (ed.), *Samayik Patre Banglar Samajchitra 1840-1905*, Vol.2, Calcutta, 1st edition 1963, pp.110 - 11.



In another article published at the time, there is some indication that the legal system set up by the colonial administration was thought to be singularly blind when it came to the trial of rich people. Without giving particulars, an incident of zamindari oppression against a man daring to raise his voice against the injustice of the zamindar was mentioned where the person's home was attacked by the zamindar's trained dacoits, "the ladies of his family were not spared ill-treatment", and a personal friend was confined in the zamindar's lock-up. The zamindar gave a bribe of Rs. 30,000, and was acquitted in the ensuing trial. The cynical conclusion, therefore, in 1865 that "a person who has money in this country, can indulge in daylight robbery and still be free to roam the country as a free man", seemed to bear out the bhadralok's distrust of the criminal courts.<sup>74</sup>

The disjuncture between the "political" trial leading to imprisonment and the "social" crime accompanied by a jail sentence was treated differently by a subject population at the start of the 1860s, as was evident in the different responses of the Bengali elite to the trial and imprisonment of the Reverend Long and that of Joykrishna Mukherjee. In the former, the sense of injustice was sharper, and the government's role was easy to locate. Where the participation of the colonial government in the injustice of legal procedures and wrongful imprisonment was not clearly visible, bhadralok opinion became tied up in its caste prejudices and class bias. The bhadralok, striving for a self-image that was devoid of criminality, and interested in the preservation of law, order and property rights, and the colonial emphasis on the rule of law, thus shared in this case a close identity of interests.

Yet 1861, as discussed before, marked the divergence of ways. The trial of the Reverend Long brought an ambivalence into middle-class attitudes towards imprisonment because of actions deemed criminal by the government, yet not judged so by itself. This ambivalence owed its existence to the fact that the bhadralok was trapped within the parameters of the "rule of law" that justified the presence of the legal and penal institutions. The misfit of the institutions were seen

<sup>74</sup>Samvad Bhaskar, B. Ghosh (ed.), Samayik Patre Banglar Samajchitra 1840-1905, no. 103, Dec. 1865, Vol.3, Calcutta, Jul. 1964, pp. 350 - 52.

in the context of bhadralok society, but the chief area of the operation of the system were perceived to be plainly applicable to the chhotolok population. The zamindars were seen to be manipulators par excellence of the alien institutions, as they had money and power at their disposal. The bhadralok, on the other hand, without either, saw themselves as the victims of the colonial institutions when they faced the experience of being put on trial and jailed.

### **Jail Experiences**

By the 1850s there was a growing mass of critical literature about the ignominy of the criminal courts and jails based on the bhadralok experience of bad food, unaccustomed labour, and harsh jail discipline, and instances of jail mortality. This aspect will be further explored in the fourth and fifth chapters, through an analysis of literary sources. Possibly because of custodial deaths, as in zamindar Umesh Chandra's case, there grew up around the jail a strong belief that not many members of the bhadralok left the prison alive. There was also a conviction born from the bhadralok experience of the jail that they, as a class, fell victims to the harsh prison discipline and "inhuman" work load exacted from the prisoners, while the chhotolok, used to hardships and labour, survived the prison regime far better. Therefore, whatever concern was felt for prisoners was reserved almost exclusively for the bhadralok themselves.

This consciousness of rank and privileges was also visible in the administration's extension of privileges to individual members of the indigenous elite, who were perceived to be victims. Joykrishna's demand for special treatment in the jail was met in 1859; his request for transfer from Hooghly to Alipur jail was granted in 1862. In Jaynarayan Singh's case Beames was aware of the distinction between him and other prisoners, even though the zamindar was clad in the prison garb consisting of a "loin-cloth" and was "hoeing cabbages in the jail garden".<sup>75</sup>

<sup>75</sup>John Beames, The Memoirs of a Bengal Civilian, London, 1961, pp. 153 - 54.

The colonial administration and the Anglo-Indian press were active in preserving the "dignity" of yet another imprisoned zamindar, Sheoprakash. Beames was aggrieved over the furore that arose over the confinement of a "respectable" land holder of "rank and position", who was "rotting in a felon's jail".<sup>76</sup>

It was perhaps inevitable that jails were believed to be places of infamy which only genuine criminals were fit to inhabit. The occasional "respectable" person sent there merely served to increase the sense of fear, or heighten ridicule and contempt for the man unfortunately so jailed. This reaction of the middle-class Bengali society indicates that being jailed was not glorified greatly at this time and there was generally no desire on the part of the bhadralok to challenge the government's authority in jail even in a good cause. Dinabandhu Mitra's son, Lalitchandra Mitra recorded that Dinabandhu was apprehensive of being charged with sedition along with the Reverend Long. He was reassured by Kaliprasanna Sinha who promised financial assistance to save him from the ordeal of being jailed.<sup>77</sup>

As seen in the case of Joykrishna, there was both humiliation and "shame" involved in his jail experience. His enemies triumphed in his imprisonment as it was considered to be degrading for him and his immediate family and friends. His family, especially his brothers, realised that to implicate Joykrishna in false trials, and send him to jail was the ultimate ignominy, and since the early 1860s, tried ceaselessly to get Joykrishna to serve another jail sentence, this time just not for forty three days, but for five years. Thus, jails as an institution in the 1860s were seen as a place of degradation, of intense humiliation: rivalry and revenge in any form took the shape of proving false charges in a criminal court and putting the enemy in jail. The scurrilous verses following the imprisonment of Joykrishna, with the hardships faced in the jails underlined in crude verse, reflect the attitude of the bhadralok towards a "jail-bird". It was the *manhani* (the damage to self-respect) ? which attended the first imprisonment of Joykrishna that carried the family feud into

<sup>76</sup>*Ibid.*, p.185.

<sup>77</sup>Sinha, *Naksha*, footnote 432, p. 168.

the battleground of the criminal courts where there was the ignominy of a jail sentence awaiting the loser.<sup>78</sup>

The 1860s, therefore, saw the *bhadralok* exposed to the jail as an institution and their fears about imprisonment were grounded in real experience. The attempt to contend with this aspect of the administration, especially the revelation of hardships in jails from within its walls, turned into serious criticism of the jail administration. The process, being a gradual one, cannot be pinned down to a certain date. However, it had definitely commenced from 1861 in the vernacular newspaper, Som Prakash.<sup>79</sup> Chantifore, the European jailor at Burdwan had received publicity for receiving bribes and extortion. A similar charge of bribery and extortion was levelled by the paper against the jailor Dobson and the daroga, naib (retainer), and the jamadar (low jail official). The jailor's illegal behaviour had come to light when the Collector and Magistrate, R.V. Cockerell had visited the jail, and some convicts, in a group, came up to him and complained, "We cannot give any more money, nor can we bear this inhuman treatment. Either hang us, or relieve our conditions in the jail".<sup>80</sup> The complainant, Abhaycharan Basu, significantly, was an erstwhile *ukil* (lawyer) who had occupied a respectable position in society, and was known to have ready money. A *bhadrasantan* (a respectable man's son) in such pathetic circumstances was perceived to be a victim of the system, while his image as a criminal was glossed over. What the article inveighed against was the quality of such jailors and officers who were "oppressors and sinners" and who took advantage of the members of the *bhadralok* who were given heavy sentences on very slight crimes. The writer claimed, "on something as slight as a false deposition in a court, or something similar, there were sentences of seven years or fourteen years handed out. Many 'bhadrolok' have received such inhuman sentences on negligible illegalities. Therefore, the end result is that the Sergeant is getting a paunch [a Bengali euphemism for doing very well financially]." It is important to

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<sup>78</sup>*Ibid.*, footnote 84, p. 122.

<sup>79</sup>Som Prakash, 3 Mar. 1861.

<sup>80</sup>*Ibid.*

note that on the basis of these instances, the bhadralok had begun to generalise about the jail administration in a manner which anticipated the later criticism based on the jail reports, jail visits, and more inside knowledge.

The shameful plight of the bhadralok was perceived in the article, and it fitted in with the kind of concerns the middle classes were highlighting in the jail administration. While the inhumanity of the jail authorities formed the subject-matter, the special "victimisation" of the propertied section in the jail was the focal-point. Joykrishna spoke up for himself in the jail and asked for special treatment. Abhaycharan, being trained in law, could make himself heard. Again, the article lumped together all the problems of the jails - harsh prison regime, hard labour given to the prisoners, labour beyond their physical capabilities, punishment, and extortion. Significantly, all the criticism levelled against the jails by the bhadralok was to follow this format. Yet, the institution of the jail itself was never questioned - the rationale for the prison remained in the bhadralok mind, still viable. The article did not question what the conditions of the people who were unable to pay were like. This aspect will be discussed in greater detail in Chapters Four and Five.

### **Courts and Jails For Whom?**

It has been established that the need for imprisonment was not questioned, for the bhadralok's definition of "crime" and the identified "criminal" - generally related to the lower classes - did not permit a critical evaluation of the punitive apparatus of the colonial government as a whole. However, the extreme form of punishment, capital punishment, did evoke a culture-specific response in 1863. To be appointed to preside over a sentence of hanging was worse than being thought "illegitimate and unlawful", for the extreme penalty seemed contrary to cultural beliefs. A "half-informed" person killing another, and being sentenced capitally, evoked the image of a vengeful government, "with even greater deliberation and malice", duplicating the ignorance which had bred "the horrible murderer". It was probably the confusion of the community, confronted by sets of alien rules and regulations

defining "crime" and "criminals" with which the bhadralok partially agreed, or at least could find no logical flaw, which led it to contradict itself by defining the action of "some miserable man, half-informed perhaps", as a "horrible murderer" or the "crime of murder" as "heinous". Thus, possibly, both the inherent sentiments in the statement were embedded in the bhadralok culture that decried violence. The great physical violence sanctified by law, flogging, was also thought to be against Bengali culture. It was thus an attempt to situate the Bengali society on a different plane, with different cultural values, as against the colonial rule, and therefore the insistence on the preference of "peace and cultivation" to the bloody sports like "duels and prize-fighting", that were perceived to be sponsored by the Europeans.<sup>81</sup>

In this context of a community struggling to define its values at a vulnerable point, questions regarding the punishment of criminals at war with the community interests, and the efficacy of the courts and the jails assumed importance in the 1870s. 1871 saw the assassination of Justice Norman in Calcutta.<sup>82</sup> All the contradictions inherent in bhadralok discourse were brought to the surface by this crime. There arose such a storm of condemnation of the "monster who had done this diabolical crime" that even the Anglo-Indian press was overshadowed by bhadralok professions of horror. Every "native" household, "even ... the zenana" felt the "poignant ... pang". However, the real source of concern lay elsewhere. It was feared that the government would suspect a deep-seated plot to destabilise the colonial rule, and the Hindoo Patriot hoped "along with Mr. Justice Phayre that this cowardly act was not the result of any political conspiracy".<sup>83</sup> The article noted that feelings ran high against the Muslim community, yet the general tone of the bhadralok discourse was one of moderation: "we say now as we said during the Sepoy Revolt that though the misguided wretches might be counted by thousands, the loyal subjects of the Queen might be reckoned in millions".<sup>84</sup>

<sup>81</sup> "Fights versus Executions", Bengalee, 16 Dec. 1863, p.396.

<sup>82</sup> Commissioner of Police, Calcutta, to Private Sec. to Governor General, 28 Sep. 1871, Nos. 22-24, Home Judicial, 14 Oct. 1871, NAI.

<sup>83</sup> Hindoo Patriot, 25 Sep. 1871, p.308.

<sup>84</sup> Ibid.

The trial of the "assassin Abdullah" was an important indication of the direction bhadralok ideas on crime were taking. The legal procedure had taken hold of the bhadralok. Hence the criticism was that the trial was too hasty, and a proper identification of the prisoner had not been done by the police. It was not known from which part of the country he came, just that he was originally from a village called Dhir in Afghanistan, and had stayed in India for six years, two in Rampur, two in Mirzapur, and two in Calcutta. In Calcutta he resided in the Nacoda Masjid on the Chitpur Road, and was an "educated" man, knowing Arabic, Persian and Pushtu. In Calcutta he survived by begging for alms. For the safety of the English bureaucracy, the extent of a conspiracy, if any, had to be determined. A religious conspiracy to get rid of the English was not impossible, for "the conical shape of the man's head ... shews that the bump of religion, which in his case means fanaticism, is more than ordinary [sic] developed in him ...."

As a "criminal" he was too composed. Nothing but fanaticism could have engendered the calmness of demeanour "with which he surveyed the scene, the product of his own foul deed", even while standing "in the prisoner's dock at the High Court". The Hindoo Patriot speaking for the crowds that had thronged the court-room, declared its puzzlement at the lack of "the slightest sign of remorse" and the "stoical indifference with which he has borne his horrible position has indeed few parallels in the history of Indian criminals".<sup>85</sup> The image of a criminal weeping for mercy in the dock, or at least one who was nervous and bewildered, was acceptable to the bhadralok, as the consternation at Abdullah's lack of reaction suggested. It was almost as if the bhadralok was transposing its own inadequacies when facing a jury, the Judge, and public, all viewing the "criminal" and his "foul deed", on Abdullah: "The man did not shed one drop of tear, even when the sentence of death was passed upon him". His composure, and his story, together with his attitude towards the court, thus surprised and shocked the bhadralok, who had expectations of viewing a frightened murderer. The bhadralok, faced with this

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<sup>85</sup>Ibid.

composed criminal, could not believe in Abdullah's explanation of losing control and murdering Norman in a fit of temper. According to Abdullah, money was owing to him, and he, in order to get it back, had paid two annas to get a petition drawn up near the "Dhurruntollah Musjid". When he had seen the Chief Justice alighting from the carriage, he had given it to him, "but as the Chief Justice refused to receive it, he got angry, in fact lost his senses, and did not remember what he did afterwards".

Fear and apprehension on the part of the criminal, respect and admiration on the part of the defenders of the legal and penal institutions, was alone comprehensible to the bhadralok. But not the attitude of being "utterly indifferent as to the threats and punishments, which may be heaped upon him. Indeed as we looked on the countenance of the man at the High Court we concluded that he must have laughed within himself at the solemn pageantry of his trial".<sup>86</sup> This prospect of the criminals not being terrified of the law was thus inordinately terrifying to the bhadralok, so intricately bound up with the colonial system of crime and punishment had they become.

Thus the inexplicable sight of a man refusing to "wonder" at the scene of the trial as an Asiatic was disturbing, and found expression in the revealing words:

as an Asiatic he could not but have wondered at the external forms of British justice. It is as well that he and men like him should wonder. Amid the sorrow and sadness of the occasion nothing could be more impressive upon the mind than the stern rules of an English Court of Justice, which would not deny a fair and open trial to the basest criminal.<sup>87</sup>

But whose mind? The bhadralok's mind had been affected, and loyalty had been aroused at the sight of so much grand "pagantry"; the complete contrast to the previous ruler's judicial process had risen starkly to their minds, but by their own showing, this criminal with an "indifferent" attitude had not responded to this explicit statement of the "rule of law". It was the bhadralok who were lost in

<sup>86</sup> Hindoo Patriot, 2 Oct. 1871, p. 316.

<sup>87</sup> Ibid.



wonder at the "forms of this trial". The contrast to the legal and penal procedure in a Native State, where "his head would have been severed instantly" was markedly different from the colonial government's. "The criminal ... had been caught red-handed", but first he had been placed under arrest, an enquiry by the Coroner was held, where the criminal was "given every opportunity to cross-examine the witnesses and prove his innocence". Again before the magistrate the same form was observed, while in the High Court, the criminal was "allowed to challenge the Jury, who had been summoned to try him, and to examine the witnesses to any length he like[d]". The Advocate General, conducting the prosecution, exhorted the jury at the end of the trial, to "dismiss from their minds what they had heard outside and to bring in their verdict without bias and in good conscience". Most impressive of all, "the prisoner [was] not compelled to confess his guilt", while "every word of the evidence [was] interpreted to him". This form of justice, "with the observance of all forms of procedure", which ensured "a fair and impartial trial even to such a ruffian", demonstrated to the bhadralok "that nothing could be more fair or above board than the forms of trial in an English Court of Justice" and revealed "the character of the British rule to the best advantage".<sup>88</sup> There was full faith in the justice of British rule, at least as far as the criminal was concerned, and the trial left the bhadralok convinced of the utmost desirability of the rule of law.

To the criminal, however, according to the account of the bhadralok, the forms were meaningless. This contrast delineated the fundamental difference in attitude between the bhadralok and the chhotolok regarding the institutions of control set up by the British. Even when the bhadralok began to acquire closer acquaintance with the system from the criminal's point of view, their fundamental concepts regarding the criminal did not undergo any mutation. This remained constant in a sea of change.

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<sup>88</sup>Ibid.

The very next year, the Viceroy, Lord Mayo was assassinated on 29 January, 1872,<sup>89</sup> by Sher Khan, a Pathan, who had been sentenced to transportation for life.<sup>90</sup> The same set of assumptions, which operated in the murder of Justice Norman, acted in this case as well. The same charge of religious fanaticism was levelled at Sher Afghan by the Bengali bhadralok as it was at Abdoollah. At the same time, there were very analytical assessments of the colonial government, assessment which had matured over the last decade. Thus the bhadralok knew that even though "they are pinched by this tax or that, when they are oppressed by this officer or that, or rudely shaken by this measure or that, ... they never had a better Government". The colonised context of the Indians in this respect stressed the necessity for judicial impartiality, for "nothing rankles more deep in the breasts of a subject race than the perversion of justice". The safeguard against injustice was seen to be enshrined "in the Englishman's innate love of justice", which was expected to support the bhadralok's grievances and perceived injustice: "If they are taxed inordinately, if their ancestral laws and customs are not respected, ... they trace in every one such acts a miscarriage of justice".<sup>91</sup>

Thus the Bengali bhadralok had already located the zone of confrontation at the level of what was "just" and "unjust". The assassinations pointed to the "good forms" of the British administration, and excited the admiration of the middle classes. But this was only applicable regarding the "lower orders" or the declared criminals. For themselves, the bhadralok claimed not just the form of colonial justice. From the declared perception of "injustice", the requirements of "justice" were very broad indeed. What in Abdoollah's case was seen as the perfect display of "fair play" on the part of the court and administration, for he had been informed of his rights at every stage of the "open trial", the bhadralok, when it came to themselves, called a "mockery of justice", if such trials did not take into account the bhadralok prejudices.

<sup>89</sup>Sec. of State for India, to E.C. Bayley, Sec. to GOI, 9 Nov. 1871, 31-33, Home Judicial, 23 Dec. 1871, NAI.

<sup>90</sup>Hindoo Patriot, Special Issue, 13 Feb. 1872.

<sup>91</sup>Hindoo Patriot, Feb. 26, 1872, p. 101.

With such a turbulent beginning, the 1870s started off on a fairly critical note, at least the middle classes were becoming vociferous in their demands. Their consciousness as the "subject race" was beginning to grow, as were their expectations vis-a-vis the colonial government regarding such delicate questions as law and justice. This period had the bhadralok looking in all directions trying to smell out "injustice", whether to themselves, or to the chhotolok, for they too, were perceived as part of the subject-race. Inevitably the jail became a focal point of attention.

Yet for all the concern for the jail population, there was at the same time a fair degree of unanimity with the colonial discourse regarding the "criminal classes". It must be remembered that the Criminal Tribes Act (hereafter CTA) was passed in 1871. Anand A. Yang has explained the emergence of the Act in terms of the administrative need for better control.<sup>92</sup> In a later study, Sanjay Nigam has looked at the working of the CTA, and also at the perspective of those who fell within its ambit in northern India.<sup>93</sup> About this piece of legislation, which came into operation in Bengal only in 1876, and in relation to two specific tribes, the Bediyyas and the Maghiya Domes, there was complete silence from the bhadralok. While upholding to the principle of "Where there is no law, there can be no liberty",<sup>94</sup> the bhadralok at the same time could insist on the retention of the section in the Criminal Procedure Code dealing with "bad characters". Mr. Ashley Eden's decision to do away with this section had evoked the emphatic response:

His Honor is mistaken if he thinks that there is no longer any necessity of applying them stringently, or that crimes committed by abandoned characters have decreased in number. The enforcement of these sections

<sup>92</sup>A.A. Yang, "Dangerous Castes and Tribes", in A.A. Yang (ed.) *Crime and Criminality in Passages to Social History of British India*, Tuscon, 1985, p.126.

<sup>93</sup>S. Nigam, "Disciplining and Policing the 'Criminals by Birth', The Making of a Colonial Stereotype-The Criminal Tribes and Castes of North India", Part I, *Indian Economic and Social History Review*, 27: 2, 1990, pp.131 - 62, and Part II, 27:3, 1990, pp.257 - 88.

<sup>94</sup>*Hindoo Patriot*, 18 Mar. 1872, p.136.

had done a considerable amount of good; and the more, if they are allowed to remain in force.<sup>95</sup>

In a further implicit ratification of the government position on the Criminal Tribes the bhadralok actually drew the government's attention to "suspicious groups" or "gangs" whose life-styles did not tally with the middle-class definition of a legitimate life-style. An example of the disgust expressed by the middle classes can be seen in an attempt in 1878 to outlaw "an uncivilised gang of about forty or forty-two men and women from the Western provinces" by using the provisions of the CTA, to isolate them from the rest of the society. They had no "permanent dwelling place", nor were they "seen begging or labouring in any way". This influence of the colonial discourse was overlaid by the gang's disruptive and "filthy" habits, for "they daily killed and ate jackals, snakes and other animals", and also "consumed Rs. 68, worth of liquor which they purchased at a grog-shop". All this placed them beyond the pale of respectable rural society, and "they were driven off" but that made them take "to burglary" instead. To the relief of the community, "they were seized by the Chagda police and transferred to Ranaghat", and "rumour [said] that much wealth was found with them from which it would appear that they were thieves". This reception of unsettled groups by the villages, together with the absence of any comment made on the CTA, gave the impression that the bhadralok tacitly approved of the provisions of the Act to bring certain sections of the population under some measure of control. Indeed, this was an instance of the middle classes invoking the provisions of the CTA of 1871, though not explicitly, for their own safety and that of the community by large: "The authorities should keep an eye on their movements and make them settle down in one place".<sup>96</sup>

Against this background of narrow definitions of law and justice the middle-class concern with the task of being the voice of the chhotolok can be explained.

The next five years saw a complete change in the political scene. These questions took a back-seat, and more important issues occupied the bhadralok. The trial of

<sup>95</sup>Hindu Hitaishini, 28 Jan. 1878, no.5, Bengal Native Newspaper Report (hereafter BNNR), p.7, IOL.

<sup>96</sup>Som Prakash, 29 Jul. 1878, no. 31, BNNR, 1878, p.18, IOL.

Pandit Har Sahai and then Surendranath Banerjee brought a fresh wave of political awareness into Bengal. Under the weight of these events, a clear bifurcation of the bhadralok discourse resulted with one strand treating the law and the jail as political theatres where the ruler and ruled confronted each other; and the second one holding that the law and the jail had their use for curbing criminals. It was here that the necessity of the police and the other legal and penal apparatus was felt. The "unsettled" lifestyle, coupled with their "dirty habits", anathema to bhadralok society, marked out these groups as criminals; thus colonial discourse and bhadralok discourse at this point still remained congruent. The need to drive them out was actually felt, and police protection was essential to either perform this office or at least to keep these elements from doing much harm. The Dacca Prakash demanded the "attention of the authorities to the evidence of a band of habitual thieves at Khejurtala, Keranirbat, Nyayamater Kandi ... and hope[d] that Baboo Syama Charan Ganguli, Inspector of Police, will make an effort to extirpate them".<sup>97</sup>

It can thus be said that the bhadralok latched onto certain groups that had been marked out by colonial discourse as "thievish" and "criminal", and had "criminality" attributed to them. As part of the bureaucratic machine, Girishchandra Basu reproduced in his memoirs the distinctions that had been made by colonial ethnographers like H. H. Risley. The overlapping of the definitions of the known identity of the dacoits with the colonial ethnography generating information about the castes and the subcastes of Bengal is significant. Risley, after collating a huge body of information about the numerous castes and sub-castes of Bengal, defined the "Goala": "the Gaura Ghosh or Gop-Goala, also known as Lathials [men trained in wielding a heavy staff], [who] pretend to be pure sudra, ....".<sup>98</sup> Girishchandra, out of his "official experience" as a *darogah* of the district, reproduced this record slightly differently: "Bands of dacoits are formed by the men of low castes. Mussalman, Bagdi, Kaora, Chandal, Moochi and Gwalas are the people who are

<sup>97</sup>Dacca Prakash, 7 Jan. 1883, no.2, BNNR, 1883, p.11.

<sup>98</sup>H.H.Risley, The Tribes and Castes of Bengal, Vol. II, Calcutta, 1891, p.284.

generally involved in such misdeeds".<sup>99</sup> In Krishnanagar, "most of the goalas" were dacoits, and amongst them the Gaura [Garha] Gowalas were "famous for their physique, physical strength and bravery" and to them it was easy to be "lathials during the day and dacoits at night ... moreover, they were protected by the zamindars, who saved them from the police, and gradually they would grow into experienced dacoits who knew exactly how to get around the law".<sup>100</sup> Girishchandra can be placed squarely in the professional educated middle class. He came from a well-established and well-educated Hindu Kaisth family in Malkha, in the Dacca district, and was a student of Hindu College.<sup>101</sup> In 1852-53, he joined the police force. It can be inferred from his memoir that he had imbibed the colonial discourse on the "criminal classes". An indication of the belief that only a certain class robbed, and not the bhadralok, may be seen in his reaction, and the expectation of evoking a similar reaction from the readers of his memoirs, when discussing the identity of a dacoit who had robbed a rich land-owner: "Once Bamundasbabu's house was looted by dacoits. Readers will be astonished to hear that the dacoit was from a bhadralok family whose father held a high post in the Krishnanagar district. Since his childhood he had kept bad company, and had finally left friends and family to join a group of dacoits as their leader".<sup>102</sup> This statement was made in spite of his knowledge that the local zamindars were involved in dacoities themselves, and were not interested in just a share of the spoils. In fact, Girishchandra recorded that most Bengali zamindars were responsible for such dacoities and riots but they were in general not actively involved but merely put together a band of lathials and sarkiwalas (men trained in weapons with a sharp point), and the leader of the dacoit gangs were chosen from amongst the really "hardened jail-prisoners of deadly reputation".<sup>103</sup> In the district of Krishnanagar (Nadia), a couple of zamindars were openly involved in such

<sup>99</sup>Girishchandra Basu, Sekaler Darogar Kahini, Calcutta, (1888), 1990, p.9.

<sup>100</sup>Ibid., p.10.

<sup>101</sup>Ibid., Introduction, Alok Roy, pp. 16-17.

<sup>102</sup>Ibid., p.7.

<sup>103</sup>Ibid., p.121.

dacoities, but they disdained the use of such hired bands and commandeered the loyal group of lathials and sarkiwalas themselves and the faujdari courts were flooded with cases generated from the rivalries of these two groups.<sup>104</sup> In the light of this knowledge, Girishchandra's assumption about the disbelief of his readers on learning the identity of the dacoit seems to belong to a certain class background, which did not reflect reality.

As the editor and publisher, Akshaychandra Sarkar, praised the book and its author for its "objectiveness". He said: "Another point in favour of the book is that it is objective, and the author has not hesitated to speak of the good points as well as the faults of everyone he has come in contact with - neelkar, zamindar, the rich and poor, the police and the paharadar, even of himself".<sup>105</sup> This objectivity, however, was not seen to be applicable in describing the Gowala-dacoit. Manohar's aspirations to be a bhadralok were perceived to be laughable by both the bhadralok-darogah, as well as by the bhadralok-editor. The author in describing the futility of Manohar's attempts to be one, and the editor in appreciating the need and the manner of ridicule, revealed a similarity of attitude.

### **Masculinity Perceived in the Figure of the Dacoit**

Colonial penal and legal institutions could target the lower castes more efficiently than the upper castes. The regular appearance of the lower castes in the courts and jails as criminals, malefactors for illegal activities and violence were the reinforcement required to harden the caste distinctions along a completely different direction. Thus the bhadralok could define themselves as against the chhotolok as "non-criminal", even though the evidence to the contrary was witnessed by them, recorded by them and even condoned by them. Thus the bhadralok-darogah, Girishchandra, could taunt the "darogah of dacoits", the Gowala Manohar, for

<sup>104</sup> *Ibid.*, pp. 124 -25. Also see Basudev Chatterjee, "The Darogah and Country-side: the Imposition of Police -control in Bengal and its Impact", *Indian Economic and Social History Review*, 18:1, Jan-Mar., 1981, pp. 1-42.

<sup>105</sup> Basu, *Darogar Kahini*, Appendix, Akshaychandra Sarkar, p. 254.

aspiring to be a bhadralok.<sup>106</sup> At the same time, he held the daring robbery on the village, Meerha, by "Keshabbabu", the zamindar of Nakashipara, as bravery incarnate. He described Keshab's daring raid on Meerha, the property of his rival zamindar, Ishanbabu admiringly: "In that inky darkness, the Rajput mard [man], alone on horseback, travelled like the wind across fifteen cros to where his armed men were waiting for him".<sup>107</sup>

In a celebration of physical fitness, Girishchandra was eloquent on Keshabbabu's physical fitness, and his deftness with lathis. However, he dwelt on Manohar's strong physique in order to stress his chhotolok origins. There was a similar attitude in describing the strong physique of the Gowalas who were "tall, narrow waisted, wide chested and with medium-brown skins". They were "accustomed to healthy pursuits, as the preparation of milk and curds, their traditional occupation, was undertaken by, and the products sold by the women, while the men were responsible for grazing the livestock. Running after the animals over long distances and having a lot of milk had "prepared them physically for the dual role of lathiyal and dacoit".<sup>108</sup>

These were the individuals, then, who were responsible for the dacoities that were committed by the lower castes, and who were punished by the law, and for whom the bhadralok thought that the jails were created. There were also the zamindar dacoits who became the masculine symbols of Bengali culture, like Keshabbabu, who was so tough that until two servants had boxed and slapped him for a long while, he could not get to sleep.<sup>109</sup> It is not surprising, therefore, that the imprisonment of Manohar and his subsequent transportation in the ship "Clarissa", was recorded by Girish Basu, but the imprisonment of Keshabchandra Roy, for his daring dacoity on Meerha on horseback by the Magistrate of Nadia,

<sup>106</sup>*Ibid.*, p. 23.

<sup>107</sup>*Ibid.*, p.129, (30 miles, 1 cros=2 miles).

<sup>108</sup>*Ibid.*, p.10.

<sup>109</sup>*Ibid.*, p.124, Also see Indira Choudhury - Sengupta, "Colonialism and Cultural Identity: The Making of a Hindu Discourse, Bengal 1867-1905", Unpublished Ph.D thesis, SOAS, 1993, pp.287 - 98.



C.F. Montessor, was not even mentioned.<sup>110</sup> This very different account of the exploits of Keshab Roy, and his petition to the government from the Nadia jail for more lenient treatment, and requesting the removal of fetters from his hands and feet, as the petitioner was from a "respectable family, and ... always lived in a peaceable manner, in the management of his landed property", gave a class dimension to Girish Basu's account of the criminality of the chhotolok, and which engaged simultaneously in the construction of a non-criminal identity for the bhadralok.<sup>111</sup>

The image of the starkly masculine figure of the dacoit of the past was evoked to compensate the Bengali for the lack of bravery and physical toughness that were seen to characterise the disarmed middle-class Bengali of the late nineteenth century, stripped of all valour and masculinity. The figure of the chhotolok dacoit, who terrorised a disarmed and helpless people into giving up their scanty possessions, was condemned in the newspapers: "The dacoits have become bold because they are conscious that a disarmed population cannot protect itself".<sup>112</sup> This was the emasculated Bengali nation that had been deprived of the previous hero-like qualities in the "evil moment that Lord Lytton passed the Arms Act and placed the Indian people at the mercy of the dacoits".<sup>113</sup>

This was contrasted with the stalwart figure of the traditional dacoit, who was daring and like Keshabbabu, "did not know what fear was", and performed remarkable feats.<sup>114</sup> Such individuals achieved a kind of "hero status" in Bengali eyes, and the Ananda Bazar Patrika invoked the figure that might have faced the colonial power:

Under the rigorous administration of the English nation this class of valorous dacoits have died out. It was not with an eye to the preservation

<sup>110</sup>C.F. Montessor, Magistrate of Nadia, to W. Dampier, Superintendent of Police, L.P., Nadia, 13 Jun. 1853, 5, 1091, BJP, 2 Mar. 1854, IOL.

<sup>111</sup>Petition from Keshabchundra Roy, a prisoner in the Nadia Jail, to Cecil Beadon, Sec. to GOB, 23 June, 1853, 6, BJP 2 Mar. 1854, IOL.

<sup>112</sup>Sanjivani, 12 Jun. 1886, no.25, BNNR, 1886, p.707.

<sup>113</sup>Ibid.

<sup>114</sup>Mrinalini Sinha, Colonial Masculinity: The 'Manly Englishman' and the 'Effeminate Bengali' in the Late Nineteenth Century, Manchester, 1995, pp. 16-25.

of the peace alone that the British Government put these dacoits down. Considering the unnatural relation in which the Englishmen stand to India, it was not improbable that the presence of valorous persons in the country would cause uneasiness to that government.<sup>115</sup>

Girishchandra Basu had also given some indication of the awe in which the memories of famous dacoits like Raghunath, Baidyanath or Bishwanath were held. He mentioned that these dacoits would actually warn the people of the house of their intentions and then come and loot.<sup>116</sup> This was the image that Saratchandra Chattopadhyay evoked in his only contribution to children's literature (that was in itself significant, as it held up a model of bravery to the young), of the valorous dacoit, Nayan Bagdi, who could put to flight single-handedly a party of five-six cut-throats who could kill a *boshtom*, a poor minstrel who eked out a livelihood by asking for alms from villagers in return for singing devotional songs.

Nayanda suddenly stopped and yelled in a most blood-curdling voice - "I am warning you. The son of a Brahmin is with me, if you throw the pabda, I will not keep a single one of you alive".<sup>117</sup>

Yet this image of the "valourous" dacoit, who did not cross the boundaries of caste (as Nayan was more concerned with the son of a Brahmin accompanying him than with himself), was overlaid with a strange duality, for the present dacoit, an "ordinary criminal", required the vigilance of the colonial legal and penal institutions to keep the lives and property of the people safe. Paradoxically, there was a feeling that the colonial government was not doing its utmost to protect the lives and property of the people, contrary to what it had promised :

It was the boast of the British Government that it had made life and property secure in British India, a thing unknown under its Muhammedan rulers. Two dacoities were committed during the course of last week in

<sup>115</sup> *Ananda Bazar Patrika*, 30 Jun. 1884, no. 27, BNNR, 1884, p.810.

<sup>116</sup> Basu, *Darogar Kahini*, p.3.

<sup>117</sup> Saratchandra Chattopadhyay, "Panchash Bacharer Purber Kahini", *Sulabh Sarat Samagra*, Vol. II, published in Pathsala, Ashwin -Kartik, 1344 B.S. 1937, Vol. 2, p.1772.

Serampore alone. Will Government still say that life and property are secure in India?<sup>118</sup>

These dacoits were therefore different from the "hero" who still lingered in the Chambal valley, in Central India, who still carried on "depredations" despite the rigorous administration of the British Government for "He is fearless, a friend of the weak and a foe of the wicked ... the people in Central India love him and admire him as a hero".<sup>119</sup>

## Conclusion

This chapter has examined the changing values of the bhadralok, which changed with their demands over time, and reshaped their expectations vis-a-vis the colonial government. The "rule of law", the hegemonical ideology that the colonial government projected, provided a justification for colonial government in bhadralok eyes in the 1850s. The political developments of the 1850s, the Santal Rebellion and the Revolt of 1857, strengthened bhadralok respect for the "rule of law". At this stage, the bhadralok were not actively involved in raising a dissenting voice against the colonial government, and hence were immune from the weight of the penal and legal system. With the indigo Rebellion there was a gradual intensification of the state power against this apparent immunity of the bhadralok; with greater familiarity with the legal and penal institutions, the bhadralok could no longer occupy the position of an observer within the colonial infra-structure, as the beneficiaries of colonial rule. How the bhadralok shifted position to that of an antagonist of the rule of law as it applied to them, yet a staunch supporter of the legal and penal process as it operated on the chhotolok, has been analysed in this chapter. In so doing, the bhadralok replicated the categories created by the colonial discourse about the criminality of certain groups, and distanced themselves from any imputation of criminality. There was a sustained bhadralok discourse revolving around the courts and jails which began from this transitional phase, and which first established itself

<sup>118</sup>Sanjivani, 12 Jun. 1886, no. 27, BNNR, 1886. p. 707.

<sup>119</sup>Ananda Bazar Patrika, 30 Jun. 1884, no. 27, BNNR 1884, p.810.

as a "non-criminal" class. This chapter establishes that the jails and the courts were gradually being viewed by this class as the domain of the chhotolok criminals. By 1908, *Bande Mataram*, a revolutionary newspaper, could say that "Ninety nine out of every hundred prisoners are ... coarse, degraded, filthy, shameless wretches - the scum and refuse of the people, inured to physical hardship and callous to personal degradation". Therefore, when "a vulgar crime" was occasionally committed by "a cultivated man", the "infamy of his offence" was considered rather to be "increased than lessened by his higher breeding".<sup>120</sup> This consciousness, the effort of the last fifty years, made the bhadralok very conscious of its function as the intellectuals and the prime actors deployed against the colonial power, making the supreme sacrifice of taking a place amongst the "degraded wretches", as "cultivated men" who were imbued with the highest principles.

*this doesn't follow from the earlier argument*

By 1926, this middle-class profile of the national movement was clearly visible to the powerful and popular writer, and nationalist, Saratchandra Chattopadhyay. The occupation of the jail required sacrifice, and this could be provided only by "The heart-felt conviction of a hand-full of [middle-class] youth".<sup>121</sup>

<sup>120</sup>*Bande Mataram*, 27 Aug. 1908.

<sup>121</sup>Saratchandra Chattopadhyay, "Bartaman-Hindu-Mussalman Samasya", essay in *Hindu Sangh*, 19 Ashwin, 1333 B.S., c.1926, Sukumar Sen (ed.), *Sulabh Saratsamagra*, Vol.2, Calcutta, p.2136.

### Chapter Three

#### The Voice of the Chhotolok

The second chapter recognised that bhadralok discourse on criminality ran parallel to official discourse, but sought to mark the parting of ways during the indigo rebellion in 1860-62. At the same time, stress was laid on the fact that this consciousness did not extend to the "criminal classes", for the bhadralok were convinced of the desirability of the criminal courts and the imprisonment of desperate criminals. The present chapter dwells on the polarisation of the bhadralok and the chhotolok as the jails threatened to play a greater part in the lives of the bhadralok. The need for differentiation between the two major social categories arose, and were explored by the bhadralok, because of the political implications of the jail as a political weapon.

This chapter examines the bhadralok concepts of "criminality" and the "criminals" which corresponded exactly with the colonial administration's identification of crime and "criminals" with the lower castes. Thus, the acceptance of categories of the "criminal tribes", the criminal propensities of the lower castes, and other administrative stereotypes can be explained by a pre-existing sense of social odium attached to such "criminal" sections, corresponding to possibly pre-existing conceptions of the criminality of the lower castes. The chhotolok, for the most part, bore the brunt of the colonial control system. In his article on the prisons and the need for "control", Ranjan Chakraborty, stated that: "From all available sources, official as well as unofficial, it seems certain that imprisonment was not considered as a disgrace among the lower classes of the society".<sup>1</sup> This thesis supports this broad generalisation, but contends that this categorical statement needs qualification. Even if imprisonment was not considered a "disgrace", a statement open to some doubt, what was the position of the prison and crime in chhotolok

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<sup>1</sup>Ranjan Chakraborty, "Prison as a Lever of Social Control: Bengal 1800-1860", Bengal Past and Present, Vol. CVIII, 1989, nos 206 - 207, p.123.

attitudes?

If a fairly early source is considered, namely folk-literature dating back to the eighteenth century, it can be said that there was a deeply ambiguous attitude to crime and criminals. There were no "hereditary criminals" in the sources that are available on the subject.<sup>2</sup> The folk-tales told in "*paalaas*" or long songs had references to robbers<sup>3</sup> and the "*yayavar*" (nomadic) communities which were later dubbed "criminal" by the bhadralok and colonial discourse.<sup>4</sup> But the folk-literature of the eighteenth century and previously, did not dwell on the "criminal" aspect even though the criminality of the Bedyas and of robbers was recognised. There is an indication that the rural poets thought that simple lack of wealth made communities or members of communities turn criminal. From the fragmentary sources available, segregation because of "criminal" habits did not exist at any level of rural society.

However, references to criminal pursuits are rarely found, apart from a few sources like these. This seems strange, for nineteenth-century official records state categorically that dacoity had become endemic in rural Bengal.<sup>5</sup> There are, however, references in folk-tales to men taking to dacoity in times of intense economic distress, "when men ate dead dogs and cats". Thus there was an indication that during times of famine there was a loosening of the moral code. At such a time, Kenaram, even though belonging to a Brahmin family, was sold for five *cutahs* (a measure) of rice to the Kaibarttas (low caste).<sup>6</sup> The *paalaa*, written in the fourteenth century by a poetess called Chandravati, told the story of Kenaram's conversion from a dacoit into a staunch Vaishnavite under the influence of a Vaishnavite saint. This *paalaa* was still socially

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<sup>2</sup> Dineshchandra Sen, *Banglar Puranari*. ( 1939, present edition: Calcutta, 1983), Homra Bedey, pp.176-202., "Maniktara", 203-226. Also see "Adventurous Life of a Young Dacoit", in *The Ballads of Bengal*, compiled and edited by D. Sen, Vol. II, (1926, reprinted 1988), Delhi, pp.221-56.

<sup>3</sup>*Ibid.*, "Maniktara", pp.203-26.

<sup>4</sup>*Ibid.*, " Mahua", pp.176-202.

<sup>5</sup>See Jorg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769-1817*, Wiesbaden, 1983, pp. 4-23.

<sup>6</sup>H.H.Risley, *The Tribes and Castes of Bengal*, Vol I, Calcutta, 1891, pp.375-382. Kaibarttas are said to be "a large fishing and cultivating caste of Bengal Proper, taking rank below the Nava-sakha, or group of nine castes, from whose hands a brahman can take water".

relevant in the rural districts of Mymensingh at the time it was collected by Chandra Kumar in 1911-12 "from the peasants of [my] country", while he was the *tehsildar* (treasurer) of the zamindar in the village of Aithor. "For the post", he said, "brought me into direct contact with the peasants of a few villages near my home. They sang the ... songs and ballads which were never written [down] but was [sic] preserved merely by oral recitation and singing from generation to generation".<sup>7</sup> The *paalaa* told the story of the Kaibarta who was happy to buy him because Kenaram was a "sturdy" child and as he had seven sons, all leaders of dacoits, he would be a welcome addition. Kenaram joined the gang of dacoits on reaching maturity, and became a feared name in the eastern part of Mymensingh. He was immensely strong, and completely pitiless, and killed travellers without compunction. Thus there is an indication that the lower castes were associated with dacoity, and much feared in Bengal, but the dacoits in their turn, did not fear the administrative power of the Nawab.<sup>8</sup> This lack of fear no doubt fed the endemic dacoity which the colonial government tried so hard to battle with. Chandravati also mentions dacoity in Bengal, and made several references to Thugi.<sup>9</sup> A similar *paalaa*, also written around the fourteenth century by a "rustic Muhammedan poet", on Nizam the dacoit, who was converted by a "Muhammedan saint" to spiritual mysticism, falls within the same genre.<sup>10</sup>

The survival of these *paalaas* is indicative of the power of oral traditions that were preserved in the countryside by the *gaayen* (singer) who sang a living tradition. An important point seems to be the persistence of such a tradition which generated a whole genre of literature based on the images of these dacoit figures. Sen is at a loss to explain the hiatus of centuries between Nizam the dacoit and his conversion, which happened near Delhi in the fourteenth century, and his story being sung about in the countryside of Chittagong in 1925: "I do not know how Nizam dacoit, who was born in Delhi, could be so popular in Chittagong that even the rustic people there have been singing his praises

<sup>7</sup>*Ibid.*, Introduction, p. xvii.

<sup>8</sup>Dinesh Chandra Sen, *The Ballads of Bengal*, Vol. I, Delhi, 1988.

<sup>9</sup>*Ibid.*, "Kenaram", p. 166.

<sup>10</sup>D.C..Sen, "The Ballad of Nizam Dacoit", in *The Ballads of Bengal*, Vol. I, pp. 276-95.

for long generations ...."<sup>11</sup> This could perhaps be partially explained by the extension of Muslim rule in eastern India, which introduced the Sufi tradition into the Bengal countryside.

The longevity of such folk-lore in popular culture could also be explained by the simple morals which they conveyed. The icon of robbers, pitiless, holding human life cheap, and greedy for gain, as the antithesis of a worthy human-being, was held up through the manner in which the figures were constructed. D.C. Sen has noticed the similarity between the two dacoit figures of Nizam and Kenaram, with the stress on their "awe-inspiring figure[s] and great physical strength", and complete pitilessness, but has not connected it to the need to place such figures, terrible in their disregard for morals, within the society, to mark lawlessness and crime in all its horror and infamy. The utter despair of such figures at the realisation of their infamy was also necessary to mark their redemption as human beings. The fact that they were redeemed through a powerful reassertion of faith explained their appeal to a countryside that lived on faith. The poems had no particular religious base, thus cutting across different religions to appeal to a society with a simple moral code.<sup>12</sup> Again Sen has observed this levelling of religious barriers, and the "Muhammedan rustic[s] ... great respect for the Hindu shrines",<sup>13</sup> and has accounted for them by the amity that existed between the two major religious communities. But there was something more than this, a common culture that had a shared moral code, observable in the appeal of these terrible figures epitomising lawlessness and criminality, veering to a life of complete devotion after undergoing a terrible moral crisis. Perhaps this was a means by which a moral substitute was found for the colonial "rule of law", which inspired the people in the countryside with respect for human life and property, in a way the colonial system did not. These folk-tales revolving around dacoits, can therefore be seen as either a reflection of reality as the village poets saw it, or an allegorical reference to "good" and "evil" values, and the power of

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<sup>11</sup> *Ibid.*, p.280.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p.277.



redemption which faith exercised over the most debased. Either way, the folk-tales did not lose their social relevance over centuries, as can be observed from their popularity.

In many later literary works, there has been repetition of this familiar theme, that of a fear-inspiring dacoit turning into a meek Vaishnavite; but in later literature this kind of transformation was also possible because of the compulsion of the colonial jail. Thus Saratchandra constructed his model of the really violent dacoit Nayan, who turned into a Vaishnava at the persuasion of a colonial jail.<sup>14</sup>

### **The Making of an Eighteenth - Century Dacoit**

In "Maniktara", a rare exploration of the pre-colonial criminal world, it is hard to decide whether the rural poet's sympathies rested with the criminals or with their victims. Dineshchandra Sen dated the poem approximately to the eighteenth century, at the time when the Mughal rule was very weak, while the East India Company had not consolidated its hold on Bengal, and thus ascribed the endemic dacoity to political weakness in Bengal. The occurrence of dacoities in the countryside, especially river dacoities, had become a part of the daily existence of the people. The locale of the poem was clearly identifiable. The incidents in the poem shifted from the Brahmaputra river, to Ganjer *haat*, Khaira Khaal, Baalukhaani, Dash Kaahaniya, and Sherpur. Only a third of the *paalaa* was collected from a *gaayen* (singer) by Biharilal Chakraborty, but the two other parts were unobtainable. Sen was convinced, however, that the remainder would be found in the Sherpur area. Its language he put down as completely rural, belonging to eastern Bengal, and written by an uneducated Muslim rural poet, Amir.<sup>15</sup>

The locale was a village situated next to the Brahmaputra river in Mymensingh, and the subject was a poor family of barbers who lived very close to the river. All the mentioned inhabitants of the village were from the lower castes - fishermen by caste, boatmen, a Kochh family.<sup>16</sup> The river-dacoits who infested the river were also boatmen,

<sup>14</sup> Saratchandra Chattopadhyay, "Panchash Bacharer Purber Kahini," *Chheleblear Galpa*, in *Sulabh Sarat Samagra*, (ed.), Sukumar Sen, Calcutta, 1344 B.S., 1937.

<sup>15</sup> *Ibid.*, "Maniktara", pp. 224 - 26.

<sup>16</sup> *Ibid.*, "Maniktara", p. 203.

and mingled with the honest ones who were not "wicked" robbers. The river-dacoits were active near the port, Ganjer *haat*, which was the biggest fair for miles. These criminals were automatically attracted to the wealth exchanging hands at the fair as many people came to the fair to buy and sell, but who had to cross the river to get there. The reputation of the river-dacoits was obviously well-known, for the travellers, after crossing safely, would render up thanks to God, according to their religion:

After having crossed Brahmaputra by paying 10 *kahan kari*

And reaching land, travellers would say, Allah, Rasul, Hari.<sup>17</sup>

The unwary could not reach the other side at all as they would be robbed and killed en route by the waiting robbers :

Some of the boatmen were good, some were bad,

In broad daylight, travellers were knifed, alas! they were so wicked.

They would loot, they would rob all the gold and jewels,

They would strip them [travellers] bare and leave them naked in the  
jungles.

Some would axe them on their heads, some would cut throats,

Some would tie hands and feet together, and drop them over board.

They would take off all the ornaments off the victims,

And give them to the head of the band.<sup>18</sup>

Here the poet was fully alive to the dangers of the river crossing, and condemned the robbers who made the merchants and other people frequenting the fair feel unsafe with good reason. Yet, when the poet made the transition to the social conditions of a poor barber or *Napit* family, which were ideal for the creation of a criminal, he did so with a certain sense of inevitability. The family discussed in the poem was extremely poor, for the negligible earnings from the barber's caste occupation did not cover even a roof to keep out the monsoon rains. Domestic tragedies killed the whole family leaving the

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<sup>17</sup> *Ibid.*, pp. 204-05, 80 karis = 1 pana, 16 panas = 1 kahana.

<sup>18</sup> *Ibid.*, p.205.

mother and only one child, Basu.<sup>19</sup> The *Kochh* family (regarded as good hunters in another folk-song), were their neighbours, and, the *Kochni*, the woman, soon became quite close to "Basu's mother".<sup>20</sup> The *kochni* had a son three years older than Basu, aged twenty, called Kanoo, and the two also struck up a close friendship. Basu's mother did not like this, for she distrusted Kanoo's nature.<sup>21</sup> However, since she felt obligated to Kanoo's mother, she did not voice her disapproval. Three years later, Kanoo came one night and asked Basu to come away with him. The mother was alarmed and reluctant, but Basu was filled with curiosity, and left with Kanoo.<sup>22</sup>

Kanoo then proposed to rob and kill an old Brahmin and his wife, who would be travelling on the river that night on Sona *majhi's* (boatman's) boat. As Sona *majhi's* illness prevented him from rowing, it was an ideal opportunity to take their wealth and then drown the boat in the whirlpool in the river. Basu feared getting drowned in the whirlpool themselves, but Kanoo had ensured against this. He had got an extremely long rope from Shambhoo the fisherman. With one end tied to a tree, and the other end to a dinghy, attached very lightly to the boat,<sup>it</sup> enabled them to return in the dinghy without any danger.<sup>23</sup> The two completed the robbery successfully, and Basu returned home and told his mother about his new-gotten wealth, but she started to tremble upon hearing the truth:

What have you done, boy, it's a disaster.

You have committed Brahmin-murder, and I am even more terrified...

Why did you not die when you were born, ...

Such an enemy should have died by drowning.<sup>24</sup>

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<sup>19</sup> *Ibid.*, pp. 205 - 06.

<sup>20</sup> Risley, *Tribes and Castes*, I, Calcutta, 1891, p.491-93. The Kochh were identified as a large "Dravidian tribe of North-Eastern and Eastern Bengal". The tribe was no longer known as Kochh but as various denominations of Rajbansis, though some of the variations had occupations like "catching and selling fish. (p. 493) and "the caste as a whole may be described as agricultural, though many, as has been mentioned above, make their living as fishermen, and carpenters, blacksmiths ..." (p. 499)

<sup>21</sup> Sen, "Mahua", p.207.

<sup>22</sup> *Ibid.*, pp.208 - 09.

<sup>23</sup> *Ibid.*, pp.209 -10.

<sup>24</sup> *Ibid.*, p.211.

The poet, therefore, describes the ideal conditions for a young man to turn to crime - a poor family, without a father earning a steady income, and a friend, who was already a criminal, from the description given of his personality, and ready to lead Basu into a life of crime. But this could be true of any young man in similar conditions; nor were Kanu's parents criminals, for had the *Kochni* been an accomplice of her son, it could not have been hidden from Basu's mother, as they were good friends. Therefore, the poem does not even hint at hereditary crime, but merely tells the story of two young men's transition into "feared robbers" and gives an explanation for the reasons and the manner in which the river-dacoits grew in number. Though there was an inevitability about the transition, there were many indications that even low caste society condemned such crimes. The mother's horrified reaction was proof of strong taboos against killing and robbing, particularly so when, as in this case, the victims were Brahmins. She even desired Basu's death, for whom she had desisted from suicide upon the tragic death of her family. She shunned her son completely, and by the morning, she had developed a fever, of which she died. Even though Basu was stricken by remorse, he could not leave the path of easy gain and continued to rob innocent travellers.<sup>25</sup>

Soon after, Basu married Maniktara, a girl possessing exceptional skill with a bow and arrow, (a skill she had learnt from the *Kochh*), with which she could kill flying birds with ease. Basu, witnessing her skill, realised of what immense use this ability could be to him.<sup>26</sup> But enlisting Maniktara's help meant a confession of his actual "profession", and Basu was terrified that Maniktara might turn from him in disgust as his mother had. Thus, the apprehension of Basu confirmed that robbery had not received social sanction at any level, and it was deemed "bad", since Basu could fear rejection from his wife, over whom a husband could traditionally exercise complete control.<sup>27</sup> While there did not seem any external "control" imposed on the people, yet the social rejection of robbers that seemed implicit in the poem possibly asserted its own control.

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<sup>25</sup> *Ibid.*, p.212.

<sup>26</sup> *Ibid.*, p.219.

<sup>27</sup> *Ibid.*, p.221.

Maniktara, however, far from being shocked, assured her husband that she could help him. Together, they planned the downfall of another robber band, the leader of which had defeated Basu several times before. Maniktara played an active role in the battle, and with her help and some of his most trusted followers, Basu managed to establish undisputed sway over the port of *Ganjer Haat*.<sup>28</sup>

In this section of the *paalaa*, there is no condemnation of the young robber, Basu, or of his active wife and partner in crime, Maniktara. On the contrary, the emphasis is on the quick-wittedness of the wife of the robber-chief, who took to a criminal life-style with ease. There are no references to such a partnership in later literature. Though there is a negative feeling towards the leader of the other dacoit band, Basu's rival, Kaloo Sardar, it is not directed at Basu, even though Basu had put together a number of very strong young men in his gang and had become a dacoit leader in his own right. He commanded a number of boats, one of them a beautiful and colourful boat, with a very fast pace, ideal for his chosen profession, and a far cry from his hereditary calling as a barber. It is, therefore, a classic example of a young man taking to a criminal life-style because of the gain involved, even knowing that it would be widely condemned within his own circle. The two young men, Basu and Kanu, were not the "men" of any powerful landowner, and they were not "mercenaries", or even from the same caste, but turned to crime because they were situated within a natural trade zone, had a poor family background, and wanted to "make good".

Another *paalaa*, set in the eighteenth century, composed on the "bedyas", who were "yayabor" or "nomads", explores such migrant groups.<sup>29</sup> This part of the chapter will try and discuss whether notions of "criminality" were associated with a nomadic tribe, the Bedyas, in the eighteenth century, and who were later marked out as a "criminal tribe" by the colonial government.

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<sup>28</sup> *Ibid.*, pp.223-24.

<sup>29</sup> Sen, "Mahua", pp.176-202.

### **The Concept of the Criminal Tribes : The Bedyas**

Most of the issues which came up in the *paalaa* "Mahua", were discussed in official sources in the 1870s. The example of the Bedyas was given by official sources to illustrate community crime in Bengal, where both the men and women were involved in a life of crime, though their ostensible occupation was acrobatics and making rush mats. The Bedyas were nomadic, with a reputation for being thieves, and were therefore prime candidates for being put under the Criminal Tribes Act of 1871(CTA).<sup>30</sup> The Act was to be operative in Bengal in a retrospective manner. In 1871 the Lieutenant-Governor of Bengal was particularly attentive to the crime reports presented by the Inspector-General of Police. This is significant because it was the dacoits who had been identified as the disruptive force in the Bengal countryside, not the "criminal tribes". The fragmentary sources indicate that the communities in Bengal were acquainted with migratory tribes and did not regard them as intrinsically criminal. It is plain from the administrative position in 1870 that "hereditary" criminal tribes were not part of Bengal's problem. Thus, "when the Criminal Tribe's Bill was under consideration, the Government of Bengal was consulted as to the necessity of the special legislation", the reply was that the "proposed enactment was not required in Bengal", and would in practice "perpetuate the vagabond life which the few classes of thieves resident in those Provinces now lead, and would make it more difficult for them ever to become honest members of society".<sup>31</sup> Though the Bengal government, even in 1870, did not perceive the necessity for the CTA, by 1873, two "tribes" had been identified as "criminal" through the police reports and the jail records - the Bedyas and the Maghiya Doms. It is clear from the official records that the Government of India looked to the North- Western Provinces to provide Bengal with a model. In 1873 the Bengal government sought to "criminalise" the Maghiya Doms under the first section of the CTA. George Campbell, the Lieutenant-Governor, felt that the "accounts received of the Maghiya Domes surpassed all his

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<sup>30</sup> Home Judicial, Nos. 139 - 150, January 1876, NAI.

<sup>31</sup> Government of Bengal, No. 3368, 9 Aug. 1870, quoting from letter no. 3709, 21 Oct. 1875, no. 150, Home Judicial, Jan. 1876, NAI.

experience of other criminal tribes",<sup>32</sup> but the Government of India referred the case to the North Western Provinces. The North Western Provinces Government was dismissive of Bengal's problem with "criminal tribes", saying that "the circumstances of the tribe did not urgently call for the intervention of a stringent and special law".<sup>33</sup> This reliance upon the North Western Provinces model was because, unlike Bengal, a well-expounded discourse on the "criminal tribes" had evolved there. This in turn was the natural by-product of the government's concern with the problem of Thugi, again first located in this area.<sup>34</sup> Therefore the proposed legislation regarding the extension of the Act to the Lower Provinces was shelved, and the Government of Bengal proposed to follow a "wait and see" policy, as it was expected that the 1873-74 famine affecting the lower classes might force the Maghiya Doms to seek government aid but the Maghiya Doms made no such attempt: the Government of Bengal then decided to bring both the Maghiya Doms and the Bedyas of Nadia and Jessore under the Act, subject to the Government of India's approval.<sup>35</sup>

The complete silence of the educated middle classes on this issue could have two implications: it might indicate a lack of knowledge or interest about the "criminal tribes", or there was a consciousness about the inherent "criminality" of the Bedyas, but the segregating effect of the caste-system was thought to be adequate. A *paalaa* to be discussed shortly dwells on the fact that the heroine, Mahua, was "stolen" by the Bedyas. However, Bengali literature does not abound in references to such "tribes". There also seems to be a complete want of information between the early eighteenth and the late nineteenth centuries. Only in 1876 did the Bedyas appear in colonial discourse as a "criminal tribe", which seems to point to the distress years of famine, 1866<sup>36</sup> and

<sup>32</sup> Government of Bengal, quoting letter no. 3144, 11 July 1873, Home, Jan. 1876, NAI.

<sup>33</sup> Government of North Western Provinces, L No. 1877, 20 Nov. 1873, Home, Jan. 1876, NAI.

<sup>34</sup> Sanjay Nigam, "Disciplining and Policing the 'Criminals by Birth', The Making of a Colonial Stereotype - The Criminal Tribes and Castes of North India", Part I, in *IESHR*, 27: 2, 1990, pp. 131-64, and II, 27:3, 1990, pp. 257 - 288.

<sup>35</sup> Government of Bengal, No. 1361, 2 Apr. 1875, Home, NAI.

<sup>36</sup> Annual Jail Report for Bengal, (AJRB) 1866-67, by Dr. Mouat, pp.18-19, IOL.

1873<sup>37</sup> as a contributory factor in their alleged criminality. Neither the colonial discourse nor bhadralok discourse engaged actively with the depredations of the "criminal tribes" during this period of silence. However, the jail records and the criminal convictions in Jessore and Nadia did reveal the high profile of the Bedyas as "criminals", and from this official attention became increasingly focused on the community. Nor did the vernacular newspapers, as seen in the previous chapter, and there were only requests in the Press for the provisions of the CTA to be applied in certain cases of "wandering gangs" in 1878, after the CTA had been passed, thereby proving the bhadralok's awareness of such "criminal tribes" after 1876.

This attitude on the part of the bhadralok makes it fairly obvious that the colonial discourse, and the "criminalisation" of a certain section of the society met with unqualified approval from the bhadralok and fitted neatly into bhadralok discourse about the chhotolok. The crime columns, the daily reports on thefts, burglaries, attempts to burgle, and murders reported in the newspapers had built up a body of knowledge about varieties of crime. Moreover, the list of suspects had established the identification of the criminals with the chhotolok. Likewise, the lists provided by the jail administration of the criminal sections of the population by the 1870s confirmed this. The bhadralok loudly claimed government assistance to control crime and criminals: this was the direction in which the government's duty lay, not in any needless interference with the political aspirations of the bhadralok.

There are some indications that there were different feelings in Bengali society about vagrant tribes in the eighteenth century, when there were no overlaying of colonial discourse to colour the bhadralok perception. However, this evidence is over-shadowed by bhadralok interpretations, and its authenticity as evidence is difficult to assess, but some assumptions can be made. The likeness of the Bedyas as described in the official discourse in 1876 and the description of the local poet in the eighteenth century of the "yayavar" (migrant) converge at many points. It is the people's attitude that is surprisingly different from the colonial version; it is significant that there is a silence

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<sup>37</sup>AJRB, 1873, by Dr. Heeley, p.7, IOL.



about them from the bhadralok. The bhadralok repeated the colonial policy of segregation in the newspapers after 1878. Therefore, it is difficult to assess how far this attitude was inculcated in the bhadralok by the open declaration of the Act as operative against certain "criminal tribes", and how far such an attitude was part of the higher castes' culture and predated such legislative expressions.

### **The "Criminality" of a Tribe in Eighteenth - Century Bengal:**

The *paalaa* "Mahua" described a set of nomadic people called the "bedya" or the "bedes", who, from their abode on the lower reaches of the mountains, moved down to the plains to show their skills as tight-rope acrobats. But on these expeditions, they also looted people. On one such expedition, the leader of the community, Homra, stole a Brahmin baby girl, and named her Mahua.<sup>38</sup> She grew into a beautiful young woman and was integral to the Bedyas community, for both her skill on the tight-rope, and her beauty attracted many customers.<sup>39</sup> Another expedition to the plains to earn money was planned by the band. Thus the poem, at its very start, has a contradictory attitude towards this migrant group. They looted, and yet they also undertook expeditions to earn money. The cavalcade, led by Homra, consisted of birds, hunting dogs, donkeys carrying tents, ropes, stakes, bamboos, bows and arrows, good horses and the whole Bedyas community. This information is helpful for the connection of the Bedyas community to the colonial administration's information on the Bedyas as a "criminal tribe" after a gap of almost a century.

The Bedyas professed to work miracles through the "bone" of a "charal" (Chandal), which could make severed heads talk or put life into dead bodies. The *paalaa* described the curiosity of the people regarding these magical powers, but there was no suggestion that the people identified the band with robbers. This non-association of the Bedyas with criminality was obvious in "Bamundanga", the district where they halted for

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<sup>38</sup> Sen, "Mahua", pp. 176 -177.

<sup>39</sup> Risley, *The Tribes and Castes of Bengal*, Vol.1, 1891, p.83. "As acrobats the women and the girls are the chief performers: the men play tricks with balls and knives".

a performance. The Brahmin landowner was very rich, and regarded as a Raja by the people. His son, Nader Chand, was in the assembly-hall when he was informed of the arrival of the Bedyas, "who could perform fantastic feats".<sup>40</sup> They were asked to perform in the *Rajbaari* (palace) for a fee of a hundred rupees and a huge crowd gathered. After the performance was over, Nader Chand gave the players a big grant of land in the south of the district, and gave orders for houses to be built for the Bedyas and encouraged them to settle in the district.<sup>41</sup> This was far from a display of fear and disgust. Nor were there any restrictions on the movements of the Bedyas, and they were allowed entry everywhere for their performances, thus demonstrating the lack of any suspicion towards them. It was the Bedy leader, Homra, who was suspicious of Nader Chand's interest in Mahua, and despite the inducements offered, wanted to get away. He told his reluctant brother to pack, for he was apprehensive that they would all fall into a trap set by Nader Chand, and repeated "we will never see the light of the day in the dungeons" and "we would all be buried alive".<sup>42</sup> The Bedyas were apprehensive, conscious of the power of the landowner, and certainly not seeking to challenge this power. Moreover, though their mobility was guaranteed, for they had horses, Homra avoided a confrontation with Nader Chand. Instead, nervous of the dungeons, or a painful death, he preferred a quick getaway. The next morning the people were amazed to see the Bedy locality deserted. They had only taken what belonged to them - not even a sheaf of ripe paddy had been taken from the fields.

Thus, even though the song started with the terrible Homra stealing a girl, and the acrobatics just being a cover for more nefarious purposes, in the narration of events, there is no mention of the activity at night of a robber band: they slept at night in the houses that had been built for them at the landowner's command, turning into cultivators at the encouragement of Nader Chand. They grew their own vegetables, their own rice, and the ambition of Homra was to give Mahua gold armlets and a necklace with the price

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<sup>40</sup> Sen, "Mahua", p.177.

<sup>41</sup> *Ibid.*, p.177-78.

<sup>42</sup> *Ibid.*, pp.182-83.

of the food-grains sold at the fair.<sup>43</sup> The people of Bamundanga had not complained of any thefts or dacoities; nor were they frightened of the Bedyas. Thus the reputation of the Bedyas seems ambiguous at this stage.

Nader Chand left his own home and went in search of Mahua. He finally found her and they eloped. That the Bedyas had different practices, and techniques of survival was revealed at this point in the *paalaa*. While they were crossing a river, a merchant wanted Mahua for himself so he had Nader Chand pushed overboard. Mahua, being a Bedyas by adoption, always carried a potent poison tied in her hair,<sup>44</sup> and she used it on the crew and the merchant.<sup>45</sup> They soon fell asleep under the influence of the poison,<sup>46</sup> and Mahua scuttled the boat, drowned them all and continued her search for Nader Chand.<sup>47</sup> The poet describes her actions at this point as cruel: after drowning the merchant and his crew, she "laughed like a witch", displaying a callousness towards human-life that was part of her Bedyas upbringing.

Homra Bedyas, searching for them, found them, killed Nader Chand, while Mahua committed suicide.<sup>48</sup> Again, Homra did not behave like a murderer, for he gave up the leadership of the gang to his brother Manka, and left for an unknown destination.<sup>49</sup> But the fact that Bedyas were different from the rural community in general is revealed at various levels. What is evident is the clear caste distinction between the inhabitants of the plains, between the landowner's son, Nader Chand, who belonged to the Brahmin caste, and the *yayavar* Bedyas, who were very low in the caste hierarchy.

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<sup>43</sup> *Ibid.*, pp.178, 180 - 81.

<sup>44</sup> Saradindu Bandopadhyay, "Durgya Rahasya", (Mystery of the Fort), *Saradindu Omnibus*, Vol.2, Pratul Chandra Gupta (ed.), Calcutta, 1970, pp. 258 - 318. A detective novel written in 1940s. The murderer bought venom from Bedyas who stayed periodically outside the town, and dealt in snake venom. A proverb *Saaper hanchi Bedey cheney* (the sneeze of a snake is recognised by a Bedyas) also indicates this knowledge.

<sup>45</sup> Risley, *Tribes and Castes*, Vol. I, 1891, p.84. "(5) Samperia, snake-charmers, hawkers of miscellaneous goods, and makers of fish-hooks ... If the snake is a poisonous one, the fangs are torn out, but the poison-bag is carefully preserved".

<sup>46</sup> Sen, "Mahua", p. 190.

<sup>47</sup> *Ibid.*, p 191.

<sup>48</sup> *Ibid.*, pp. 196 - 97.

<sup>49</sup> *Ibid.*, pp .197 - 98.

The exclusivity of the caste-structure forbade marital ties between these two communities.<sup>50</sup> They were not perceived as thieves, but at the same time, the poet recognised that the migratory habits of the Bedia community, their occasional looting,<sup>51</sup> the disregard for life, exhibited even by Mahua, even though she was a Brahmin by birth, as differentiating them from the rural society they inhabited for a short time. It is necessary to stress that when the Bedyas find their way into folk-literature, their "criminality" is not isolated from the main-stream of society. Nader Chand had made his first assignation with Mahua when they were coming back from a late night performance held at a local resident's home. Had there been any fear concerning their "real" occupation, they would have been regarded with suspicion. Thus it seems reasonable to assume that the later suspicion and isolation, which one sees as a part of the bhadralok attitudes, and the colonial government's attitude regarding them, did not exist in the eighteenth century.

That they were the same "tribe", at two different times, is extremely probable. Most of the customs, half Muslim and half Hindu,<sup>52</sup> as described in the official records, are similar to the customs of the Bedyas described in the poem. They spoke a Bengali dialect, which the rural people of Bamundanga understood. In 1876, the official record declared that "their language is Bengali with Hindusthani mixed up in it, and they have a slang peculiar to themselves".<sup>53</sup> Moreover, the Bedyas worshipped Kali, which is again borne out by Mahua's promise of a sacrifice to the goddess, as she prayed for Nader Chand's recovery from a fever.<sup>54</sup> Another important point was that the Bedyas customarily buried their dead, thus coinciding with the official report: "They bury their

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<sup>50</sup> *Ibid.*, pp.181,187.

<sup>51</sup> Risley, *Tribes and Castes*, Vol. I, "Bediya, the geeric name of a number of vagrant, gypsy-like groups ... " p.83.

<sup>52</sup> Risley, *Tribes and Castes*, Vol. I, p. 83. "pedlars and mountebanks professing to be Mahommedans, but singing songs in praise of Rama and Lakshmana, and exhibiting painted scrolls representing the exploits of Hanuman," While Risley treated these characteristics as intrinsic to specific groups of bediyas, the poem attributed all these characteristics of the Bedia to one homogenous migrant group.

<sup>53</sup> Colonel J.R. Pughe, Inspector General of Police, Lower Provinces, to Sec. to GOB, 27 Aug. 1873, 146, Home, Judicial, Jan.1876, NAI.

<sup>54</sup> Sen, "Mahua", p.194. Also see above.

dead; they eat neither beef nor pork, but do not object to other flesh".<sup>55</sup> The poem confirms the observance of both Muslim and Hindu rites by the Bedyas.<sup>56</sup> That the Bedyas community were flesh-eaters, is clear when Homra went hunting and came back with birds, which he asked Mahua to cook with cumin seeds.<sup>57</sup> When Mahua and Nader Chand died, Homra asked Manka, his brother, to dig a grave and bury them together:

Homra called "oh brother Manka ...

Dig a grave and bury Mahua"....

At Homra's command, they dug graves,

And buried the two of them together.<sup>58</sup>

The official documentation about the Bedyas, while recounting other characteristics of the Bedyas, have identified many Bedyas practices, like acrobatics and bird-catching, as being practised by Mohammedan Bedyas groups,<sup>59</sup> even though the poem treated the varied pursuits of the group as their customary occupation.<sup>60</sup>

By the 1870s, therefore, though the Bedyas had emerged as "criminals" in the colonial discourse, and identified as such by the rural society, the *paalaa* described a different set of attitudes. The official sources described the Bedyas as settled in Jessore and Nadia, where their reputation as "house-breakers and petty thieves" was well known.<sup>61</sup> Yet, in many parts of Bengal, there were no complaints about the Bedyas, and the reputation seemed to be sustained by the government efforts alone. For example, the District Superintendent of Police, Nadia, G. M. Bowie, failed to win any positive response from the villages in the district he visited to establish the "criminality" of the Bedyas: "In none of the villages did he receive complaints against them, nor could he

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<sup>55</sup> Colonel J.R. Pughe, Inspector General of Police, Lower Provinces, to Sec. to GOB, 27 Aug. 1873, 146, Home, Judicial, Jan. 1876. NAI.

<sup>56</sup> Risley, *Tribes and Castes*, Vol. I, p. 83.

<sup>57</sup> Sen, "Mahua", p. 178.

<sup>58</sup> *Ibid.*, p. 197.

<sup>59</sup> Risley, *Tribes and Castes*, Vol. I, p. 83. "As acrobats the women and the girls are the chief performers. The women also dabble in medicine ..."

<sup>60</sup> Colonel J.R. Pughe, Inspector General of Police, Lower Provinces, to Sec. to GOB, 27 Aug. 1873, 146, Home, Judicial, Jan. 1876, NAI.

<sup>61</sup> *Ibid.*

discover in the neighbouring police stations an instance of their being charged with the theft of palm leaves for mat-making or other depredations".<sup>62</sup>

Moreover, the Bedyas complained to Bowie personally "against the exceptional treatment dealt out to them, and ... that they had strongly urged on one of his inspectors that land should be given them to enable them to settle and live honestly".<sup>63</sup> This request to the colonial government might seem unusual, but at the same time, it must be remembered that the Bedyas had been accustomed to receiving land-grants from the rich zamindars who attempted to settle them in one area. In Bamundanga, they had been given a big piece of fertile land, where they had taken to cultivation very readily; it was also rumoured that the Raja of Krishnanagar had first settled them in the Nadia district. In another area of Nadia, the villagers, complained bitterly about the Bedyas and their thieving habits:

The villagers in the vicinity of the villages inhabited by the Bedyas universally complained to me of the plunder of the Bedyas of their date palm-trees, the branches being unblushingly stolen by them and converted into mats.<sup>64</sup>

It is also perhaps the kind of theft that was being emphasised by the government that created the further marginalisation of the Bedyas as "criminals". Taking palm-leaves in the eighteenth century may not have been considered theft. With the broadening definition of theft, it was probable that the Bedyas found themselves moral outcasts in rural society, which had tolerated them before, again as seen in the poem. Thus the transition of certain sections of the Bedyas from being extremely mobile, able to leave a village under the hint of a threat of imprisonment, into regular jail-goers who were constantly under surveillance, is a significant commentary on the penal aspect of colonial government.

Constant stays in jail, therefore, had helped create a certain attitude amongst the

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<sup>62</sup>J. Munro, Magistrate of Nadia, to Commissioner of the Presidency Division, 20 Jul. 1870, para. 20, Home Judicial, Jan. 1876, NAI.

<sup>63</sup>*Ibid.*

<sup>64</sup>*Ibid.*

rural people and the bhadralok, which displayed itself in total distrust. It is, however, difficult to judge how far this attitude was the result of the distinct marking out of a section of the population as "dangerous" and "thieves" by colonial discourse, with the "control" apparatus visibly operating on them as a class, branding them in the eyes of the people, and how far colonial discourse fitted in to an already formed bhadralok preconception of a "dangerous" section of the population. One should keep in mind that the *paalaa* of Mahua had Homra Bedyas stealing a Brahmin girl in an expedition for plunder, and bringing her up as a part of the Bedyas team. Mahua laments:

You have emptied my parent's laps in my childhood

You have stolen somebody else's treasure.<sup>65</sup>

Homra had even killed another Brahmin, but while the poem is sympathetic to the Bedyas chief, the later fiction reveals that the Bedyas had been marginalised completely by the rural society.<sup>66</sup>

Nineteenth-century official reports complained that the Bedyas were defiant of authority in the jails. The documents made it clear that every Bedyas man was suspect, and open to arrest and imprisonment on the smallest pretext. Indeed, from the lists of jailed Bedyas, the offence is often one of "failure to furnish security" under the CTA. Surprisingly, Bedyas men were all remarkably well-educated, many knew how to read and write Bengali and English, and most knew how to read and write Bengali. The educated spoke Bengali in clear, unaccented tones. Many had sons who were being educated. They were reticent about their cultural identity, and refused, even while in jail, to tell the English officers much about themselves. Some even got sentences for being intransigent and assaulting the police. The official opinion was that as a community, they showed solidarity. Jail sentences were perhaps not seen as a disgrace, but there was certainly anger in the way the community reacted to their "persecutors". The jail officials' attempts to understand the community were in general futile, unlike the quick

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<sup>65</sup> Sen, "Mahua", p. 196.

<sup>66</sup> Bandopadhyay, "Durgya Rahasya".

enumeration of the characteristics of the Maghiya Doms,<sup>67</sup> another "criminal tribe".<sup>68</sup>

### **The Maghiya Doms and the Jails**

Like the Bedyas, the Maghiya Doms were observed by officials as frequenters of the jails. But, unlike the Bedyas, they could be more easily typified as "wild" and "uncivilised", and could therefore evoke the paternalistic responses of the colonial administration. Officials felt deeply the "responsibility which rests upon the Government to take some steps to reclaim them from habitual crime and ignorance". The Dom's "intractable character" and their habits were felt to be more akin to "wild beasts than human beings". The complete unacquaintance with education and utter disregard for human lives by the men confirmed their debased state. This was further confirmed with the behaviour of the women, who, "in the commonest quarrels use children like clubs, catching them up by the leg and swinging them around their heads". All this drew the government's attention only after their exemplary behaviour and good physiques capable of immense hardships in the jail-labour was noted. It was remarked that there were large numbers of them in the jails at a time, and it was proposed in 1875 to resettle them near a public work in the Bihar district. The commissioner felt that the costs of maintaining them in jails would be roughly equivalent to settling them in an area under a strong guard, as provided by the CTA: "Doubtless", it was said, "the proposed expenditure is high, but there will be a corresponding saving in our jail expenditure".<sup>69</sup>

The Maghiya Doms' behaviour in the jails had been closely studied by the prison authorities, and their conclusion was that they laboured in jails because they were close to their own people and locality. "They work well and are easily managed in jail while imprisoned for short terms, but pine and die when imprisoned for long terms, and

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<sup>67</sup> Risley, Tribes and Castes, Vol. 2, Calcutta, 1891, p. 28. The Maghiya Doms are described as "a subcaste of Doms ... who are cultivators and thieves".

<sup>68</sup> Home Judicial, 1876. In this context, R. Saumarez Smith's article "Rule by Records and Rule by Reports: Complementary Aspects of the British Imperial Rule of Law", Contributions to Indian Sociology, 19:1, 1985, pp. 153-176.

<sup>69</sup> C.T. Metcalfe, Commissioner of Patna Division, to Sec. to GOB, 26 Apr. 1875, 141, Home Judicial, Jan. 1876, NAI.



mutilate or starve themselves to prevent transfer to a distant jail".<sup>70</sup> But officials were fairly baffled at this "criminal tribe", who if jailed, never attempted to escape, since they had to work in the open under a nominal guard, being "D" class prisoners. Not only that, they worked well and conscientiously, and could be forced "to more orderly and regular habits than they are accustomed to". The Doms proved the validity of the colonial official's vindication of "our jail experience, where the Domes [sic] are the most industrious and most amenable to authority of all the inmates of the jail, nor does the confinement affect their health, as they are far more healthy than any other class of prisoners".<sup>71</sup>

The Maghiya Doms were marked out as a "criminal tribe" by their "wild" existence, uncultured habits, and possibly, or most probably, because of their productivity as "prisoners" with "good physiques", capable of labouring without losing health. Though the official reasons are stated with great clarity in the 1870s, with a decade of observation of their behavioural pattern in the close confines of the Champaran Jail, there are hardly any references to them in the vernacular literature taken up here. There is just a passing reference to the fighting qualities of the Maghiya Doms by Joykrishna Mukherjee, where even the Gowalas were included, for the purpose of raising standing battalions to ward off the possible threat of marauding sepoys in 1857.<sup>72</sup> As pointed out elsewhere, the total lack of reference to the "criminality" of these castes make a proper assessment of the pre-existing notions of chhotolok criminality prevalent amongst even a certain section of Bengali bhadralok difficult.

However, from a fairly fluid notion of criminality, it is clear that the bhadralok were travelling in the direction indicated by the colonial discourse. Criminality was ✓ located within the chhotolok, many removes away from the bhadralok, who, if criminals, were either valorous, or had slipped from the position of the bhadralok because they had

<sup>70</sup> S.C. Bayley, Commissioner of Patna Division, to Secretary to GOB, Judicial Department, 143, Bankipore, 14 June, 1875, Home Judicial, Jan. 1876, NAI.

<sup>71</sup> J.F.K. Hewitt, Magistrate of Champaran, to Commissioner of Patna Division, 143, Motihari, 14 May 1875, Home Judicial, 1876, NAI.

<sup>72</sup> Mukherjee, *A Bengal Zamindar*, p.193, citing from Petition of Zamindars, 18 Jun. 1857, to Magistrate of Hooghly, *Englishman*, 8 Jul. 1857.

failed to achieve the awe-mixed-with-regard of the people that had made the bhadralok-dacoits memorable. The ease with which the lower castes were marked out by Girishchandra as dacoits, while the prominent zamindar-dacoits' activities were given the stature of brave exploits of the masculine hero, makes this distinction clear. Girishchandra, writing at the end of the nineteenth century, of his experiences of the mid-nineteenth century, had put his earlier experiences in the context of a long career in the police force and government service. Hence his recollections are coloured by colonial discourse, but also tempered by his high-caste, upper-middle class background.<sup>73</sup> The hardening of the perception as to what constitutes the chhotolok is something which persists without any great variation from the 1850s, and onwards, when the attitude is displayed and enunciated clearly. What changes is the bhadralok's perception of themselves as "criminals", what comes under scrutiny is their perception of "crime" as the nationalist movement took hold of the middle classes. This did not imply that the bhadralok held the entire chhotolok to be criminal. There were always honest servants like Joykrishna Mukherjee's servant, Golam, who were beloved images of servility, faithful retainers, and loyal tenants, with no criminal identity attached to them.

### **Bhadralok Opinion of Chhotolok Criminals**

By the time Girishchandra wrote his memoirs in 1888, the administration had taken a rigid stance regarding the "criminal tribes". Thus even though there is no history of the criminality of the tribes, there is no doubt that the official history printed about the "tribe" was accepted and became part of reality as it was perceived by the bhadralok. Girishchandra repeated the "unsettled" life of the "European gypsies", described their criminal propensities, and the threat they presented to law and order in Europe, and passed on to the example of "gypsies" of Nadia and Jessore districts in Bengal, the Bedyas, as presenting a similar threat to law and order, thereby placing the European gypsies and the "gypsies" of Nadia on the same grid:

Ostensibly the Bedyas are performers or are dealers in herbs, but

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<sup>73</sup> Girishchandra Basu, Sekaler Darogar Kahini, Calcutta, (first published in 1888, 1983), 1990.

in reality stealing is their real profession. If they see a lone traveller, or a small village, they plunder it, take the loot and disappear ... they are also heavy drinkers. They freely spend money on drink. Their women steal ducks, hens, vegetables and other things from the wayside villages and prepare meals. If they are unfortunate enough to secure nothing, they make shift by begging .<sup>74</sup>

Girish Basu then described the Bedyas' *modus operandi*. The ones settled in Nadia district, specially the Bedyas of Krishnanagar were famous thieves and gained admittance into the house they meant to rob by the means of a *sind-kaati* (pick), with which they tunnelled under the walls from the outside. He also held out information as to the working of the CTA, which came into force in Bengal after 1876, which started from the premise that "the Bedyas of these villages were famous thieves", and then asserted the knowledge of the colonial administration "about their nature". The Magistrate of Krishnanagore "for this reason, gave orders that a Bedyas had to notify the thana as to his destination before he left the village" and thus tighten police surveillance on the Bedyas.<sup>75</sup>

It seems strange that the memoirs held references to clauses in the CTA without once referring directly to the Act which made the provisions possible. The restrictive administrative measures to check the Bedyas are made to seem a part of normal police procedure and the fact that the Bedyas were frequent inhabitants of the jails because of the close watch the police kept on them, seem not to be noticed. It seems probable that the *darogah* felt, along with the administration, that criminals in the Bengal province could be isolated and identified merely by locating the *jati* to which they belonged. There is thus a congruity between the colonial administration and what the bhadralok came to believe. But the major question - whether or not this division of the society into neat compartments of the "criminal" and the "non-criminals" was antecedent to colonial rule -

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<sup>74</sup> Basu, *Darogar Kahini*, pp. 190 - 91.

<sup>75</sup> *Ibid.*, pp. 195.

remains difficult to answer.

Girishchandra treats the criminality of the Bedyas as a matter of common knowledge to the residents of Krishnanagore. His memoirs implied that the colonial administration only vigilantly surveyed the Bedyas because of their notoriety in Nadia and Jessore, not because of any particular policy or Act (specifically the CTA) of the colonial administration. There was thus an impression conveyed that the Bedyas were identified as criminal upon public demand, and the Bedyas' criminality as a "criminal tribe" a matter of public awareness. This alone was responsible for extra police vigilance. Thus, strangely, Girish Basu mentioned in his memoirs the practice of unnotified Bedyas who had to report and stay in the thana for the night if found in a strange district, without once mentioning the clause in the CTA. On such an occasion, when Bedyas had reported to the thana of Krishnanagore, Girishchandra recalled having listened to the confessions of a Bedyas. Further, he held out the confession of the Bedyas as proof of the "criminality" of the tribe. The language of the confession is significant, for there is so much interference from official language, and possibly from Girishchandra's own interpretation and rearrangement of the information in a formal, stilted, form presented by the Bedyas. The presentation itself is possibly a re-rendering of official information, this time through the "authentic voice" of a Bedyas who had taken part in thieving expeditions. Thus a strange overlapping of official "knowledge", coming forth as the dominant discourse about the proverbial skills of these "master thieves", with the identical views on criminality by a member of the *bhadralok* who served the colonial government to maintain law and order, is noticable. Moreover, Basu's power to reproduce the mentality of the "criminal" because he was in the position to bring forth the "voice" as he had "heard" it in the *thana*, lend his views a seeming authenticity.

Therefore Girishchandra could declare with the confidence of a man whose profession it was to handle criminals - "The description of the Bedyas [as to how they steal] I am rendering in his own style".<sup>76</sup> The confession itself then followed, suspiciously like Girishchandra's style, but in the first person, thereby imputing to the

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<sup>76</sup> *Ibid.*, p. 196.

narrator of the incident a distancing of the self, an apparent objectivity which gave verisimilitude to the *darogah's* recollection of events.

Our main occupation is thieving ... tunnelling under the outer wall of a residence to gain secret admittance is our speciality. To make our task easy, there are actually written tracts on the subject. We learn the art of tunnelling from childhood upwards. At the coming of winter, we scatter to various parts of Bengal, and come back to our villages before the monsoons break ... we do not leave our villages together because that would only attract the attention of the police.<sup>77</sup>

At the end of the narration, the *darogah* asked, "What do you do when you get caught?" The Bedyas' answer reflected the attitude of the people towards a thief, or a robber, and also the thief's calm acceptance of the fact that a beating was inevitable, if caught. But contrary to the generally held opinion that a prison sentence had no terror for the average prison-goer, it is clear from the statement of the Bedyas, that a beating by a whole village was better than having to confess under police compulsion and then being sent off to jail.

There is nothing else to do, we get beaten up. At first it is the people whose house we had gone to burgle; then the neighbours and the villagers come in force, and beat us up, abuse us, spit upon us and even urinate on us. Some villagers think that they have punished us enough and let us go. But some cannot help turning us in to the police, and that's when we are in real trouble. The villagers, while beating us up, retain some pity, but the bloody police do not have any mercy. They only want a confession, and they don't care how they get it ... I, too, had to confess once, ... and had to serve a prison sentence of three

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<sup>77</sup> *Ibid.*, p.196.

years.<sup>78</sup>

The initial man-hunt for the criminal tribes came from the governmental side, but through constant identification of these out-castes and low-castes with a criminal identity, the bhadralok found no difficulty in accepting such a grafted-on identity of low-caste criminality. In 1885 there was an indication as to how complete were the inroads of the notion of the criminality of the Bedyas, and how strongly the government was asked to take steps against the menace by a Bengali newspaper:

the Bedyas of Jessore and Nadia formerly used to commit thefts in very distant places. But as they are now constantly watched by the police they cannot go far. The photographs of most of them are in the office of the Inspector-General of Police. The Bedyas of Kulanandpore, Bhaira...go to the north and north-east for committing thefts. The Bedyas of Lakshanapore, Kamarpara, go to the south, i.e. Calcutta, Howrah, Salkiah, Hooghly and other places for the purposes of theft. When these men rest or take their meals in any village, they conceal their house-breaking instruments in forests. They never bring stolen goods to their houses.<sup>79</sup>

Girishchandra's account of the Bedyas did not indicate that the differentiation sprang from colonial discourse. Instead, it was as if the 1871 Act were in accordance with the prior identification by the indigenous society of the "criminality" of the Bedyas as a whole. This was not to say that Girishchandra believed only in communities of criminals like the Gowalas and the Bedyas: he also met with individual thieves who were perceived to be at loggerheads with society. The statement of another thief, who was designated a "big thief" by the *darogah*, and who had been "hardened" by countless beatings and interrogations was an example. The thief himself declared that he had seen enough of the law to evade it, and to be jailed was ignominious for him, as it reflected

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<sup>78</sup>*Ibid.*, pp.203 - 05.

<sup>79</sup>*Surabhi*, 24 Mar. 1885, no. 13, BNNR, 1885, p.48.

badly on his professional expertise. There is also a working knowledge of the manner of functioning of the penal institutions as introduced by the colonial government. Its rigidly formal procedures were well known to the average thief, and it seemed that the thieves, especially the wily, took full advantage of the loopholes presented to them by the law. Munshi Sheikh outlined the methods he used to outwit the police and evade being jailed which had been effective till then. If caught, and taken to the police *thana*, he would immediately confess in order to avoid being beaten, and be sent off to the Magistrate. Whether he confessed to the Magistrate or not, he would then be sent to the *hajut* (lock-up) to await trial regardless, which was a carefully engineered sequence of events, for "apart from being imprisoned, there is no mal-treatment of prisoners".<sup>80</sup> But the Magistrate, hearing the man's denial, sent him back to the *thana*. At this miscarriage of his plans, the thief resigned himself to the "torture" of the *thana*, but asked the darogah, "Had there been a new law passed? How come things turned out this way?"<sup>81</sup> To be jailed was, from the statement of the "professional", a matter of disgrace, a professional slip-up.

I am not a *kancha* or a new [unripe] thief, ... so I know very well that if I don't confess myself, or produce the stolen goods, even if a hundred accomplices confessed and declared that I was guilty, no Magistrate can pin any crime on to me: for that reason I had never made a *ekraar* [statement], and hence never been imprisoned.<sup>82</sup>

The bhadralok *darogah's* rendition of events provides a typically middle-class response to the thief and his capacity to commit crime. The possible acquittal for want of proof of Munshi Sheikh, who had challenged the authority of the courts, was then a matter of "shame for me, and a danger to the society".<sup>83</sup> The munshi's understanding of his "rights" made the *darogah* determined to ensure that he was jailed. What is important is

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<sup>80</sup> Basu, *Darogar Kahini*, p. 110.

<sup>81</sup> *Ibid.*, p. 110.

<sup>82</sup> *Ibid.*, p. 111.

<sup>83</sup> *Ibid.*, p. 112.

the fact that there is a presumption on the part of the *darogah* about the "hardened" nature of the thief, Munshi Sheikh, or the robber, Manohar. He was probably aware that the details of the day-to-day administration he described would be used by future historians. He therefore scrupulously maintained that he was "objective" and exact: "For the future writers of history, I have penned the activities of the robbers of this country, and at the same time attempted to chronicle the methods of the police".<sup>84</sup> The editor, in 1888, testified to the accuracy of Girishchandra Basu's memoirs as well. With this seemingly value-free approach to events and people, the *darogah* approached the subject of describing a noted robber of the Gowala caste with contempt. The editor approved of the term *baeta* (rogue) used in the context of Manohar in otherwise formal prose, since it had brought Manohar "to life to the ... reader, and has told him that he was from a low caste, and by displaying superciliousness towards Manohar, the author has expressed contempt. With that little word we can almost see Manohar being humiliated and Girishbabu smiling secretly".<sup>85</sup> Manohar's mannerisms and particularity of dress incited ridicule, for it indicated that he "desired to be known as a bhadralok, and at first glance it was possible to mistake him for one. But the rascal [*baeta*] got caught out by his hair, which, after the manner of the gowalas, was tied in a knot".<sup>86</sup>

Further, what becomes increasingly obvious is that by the 1850s, the bhadralok class had started taking on certain colonial stereotypes as their very own, so much so that lower-castes' association with "criminality", loose morals, gambling, drinking, rough speech, all equally "criminal" in the eyes of the bhadralok, strongly marked out the chhotolok as the bhadralok's "other".<sup>87</sup>

Girish Basu's account of the apprehension of Chhira, a thief who had stolen valuables from a rich Hindu family, reflected some of these commonly-held norms of the bhadralok. He was caught in the house of a prostitute, so drunk he could not even defend himself: "When I reached the prostitute's house, he was still there, drinking wine and

<sup>84</sup> *Ibid.*, pp. 252-53.

<sup>85</sup> *Ibid.*, pp. 253-54.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Bharat Sanskarak*, Jun. 26, 1878, no.48, BNNR, 1878, p.17.



having fun ... the man was so drunk, he could not even talk. I sent him off to the thana, and started talking to the prostitute".<sup>88</sup> As some of the stolen goods were not recovered and Chhira refused to give information about them, the case was not resolved satisfactorily, and would have remained so, had not Chhira remembered his bhadralok background and helped this bhadralok-*darogah* to solve his own case. Chhira had been sent to the *hajut* and it was there that the *darogah* met the prisoner, coming back to the jail after a dip in the tank. Chhira was repentant and was prepared to tell Girishchandra the hiding-place of the stolen articles: "*Darogah mashai!* Staying in the *hajut* has made me think positively".<sup>89</sup> When Girishchandra refused to let Chhira accompany him on the mission, in case he ran away, Chhira said: "Even though due to misfortune I've become a thief, I did belong to a respectable family, and I also have a little education: therefore I know full well that there is no place in the world where I can be safe from the hands of the British [police]".<sup>90</sup>

As a part of the underworld, Chhira could still claim indulgence from the *darogah* because of his once-respectable status. As he knew he was going to be sentenced to nothing less than five to seven years in prison, he stated: "It is doubtful if I can ever go back home alive".<sup>91</sup> As a last indulgence he begged a full meal of rice and fish and a bottle of wine and a night of indulgence with his mistress, which Girishchandra arranged as "such a thing had its own amusing side".<sup>92</sup> The thief's demand for alcohol, and his own acceptance of it made Girishchandra apologise two decades later for his "shameful behaviour", thereby pointing to the growing rigidity of the social norms that defined bhadralok behaviour.<sup>93</sup>

It is clear that despite its "objectivity", Girish Basu's account was value-loaded and represented from an upper-caste perspective. Thus, while describing robbers' and

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<sup>88</sup> Basu, *Darogar Kahini*, p.96.

<sup>89</sup> *Ibid.*, p.99.

<sup>90</sup> *Ibid.*, p.100.

<sup>91</sup> *Ibid.*, p.102.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, p.101.

thieves' reaction to authority, Girish Basu used confrontational language for the miscreants, there is always the doubt that the *darogah* had transposed his interpretation of robbers and thieves' covert challenge to authority into direct speech. Perhaps Girish Basu, to strengthen the moral position of the administration, put words of defiance into Sheikh Munshi's mouth:

I have been apprehended on suspicion on many big dacoity cases, and many *darogahs* of many districts have tortured me to extract a confession ... I could go on about the innumerable tortures I have undergone at the hands of the *darogahs*, but none of them have been successful ... Now I have fallen into your hands, let's see what you can do? I've heard a lot about you, I would like to see if the thief is greater, or the *darogah*.<sup>94</sup>

The complete capitulation of the munshi after being outwitted by the police, and his acknowledgement of the *darogah* as his mental superior, capable of sending him to jail with fetters on his feet sounded like victory. The *darogah*, sanctimonious, the "criminal" abject, reformed before he even went to the jail, seemed like the perfect working of the police and penal institutions in unison to turn the hardened "criminal" from a life of crime. Before he fell into the hands of the law, the thief was completely devoid of morals, and when he was caught, he threw a challenge to the *darogah* to do his worst, but he finally accepted the dictates of the law, and went crying abjectly to jail. The jail has been shown to be the final degradation in the career of a successful thief, and the *darogah* was at pains to point out that the thief was fully conscious of the fact. Fetters, the mark of a prisoner, were shown to be the hated symbol of imprisonment. The insolent thief was reduced to a prisoner who had fears about ever leaving the jail "alive", surrendered all claims to wiliness, and was only dependent on the kind offices of Allah to deliver him from the jail. Munshi's capitulation was meant to give meaning to the job of a *darogah*, when repentance and reformation followed so soon after conviction. The efficacy of the penal institutions could be guessed at by the readership at whom the

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<sup>94</sup> *Ibid.*, p. 112.

memoirs were aimed.

The whole night the Munshi spoke to his wife and mother, and the next morning went weeping to the jail. Before he left, we had a brief conversation;

Munshi: *Darogah moshai* ! You broke my rule. I have never worn fetters on my feet, now I will have them. I have now seen that *darogah* is greater.

Darogah: Not the *darogah*, Munshi, but religion is greater. ? *Buqali wad ?*

Munshi: You are correct, if this time I can come back alive after serving out my sentence with the will of Allah, then I will not rob or commit dacoities any more.

Munshi was sentenced to seven years' of imprisonment in banishment.<sup>95</sup>

The criminals that the *darogah* came across during his career were only observed as the "marked criminals". Manohar was a reputed robber of Nadia, and since he belonged to the Gowala caste, the reason for his criminality was implied. The Bedyas were brought up as a thief from infancy, as revealed by his own "confession", made while spending the night in the custody of the *darogah* in the *thana*. Munshi Sheikh was a professional thief. Beyond these presumptions about the existence of thieves for the reasons mentioned, there is no probing of social backgrounds or economic causes which may perhaps have turned men towards a life of crime. The folk-tales, while exploring a life of a dacoit, had traced the making of a dacoit. Girish Basu's criminals spring from nowhere, ready to challenge his authority as a *darogah*, but they always receive their just punishment. In viewing the Bedyas as a "hereditary thief", in his assessment of Manohar as a criminal belonging to the lower castes who aspired to be taken for a member of the *bhadralok*, Girish Basu showed himself to be a true representative of the *bhadralok*. With his curious blend of administrative language which reveals itself in his narration of the history of the Bedyas, he presents a history that might have been taken directly from the

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<sup>95</sup> Ibid., p.117.

pages of an official report:

I have described the criminal propensities of the gowala caste; now I am going to give the account of another type of badmaash ... In many parts of the world there are Bedy tribes ... to thieve is bred in their bones ... Apart from thieving the gypsies have another art ... they tell fortunes and can earn money this way ... in Krishnanagar they are the Bedyas ... their secret occupation is thieving ... <sup>96</sup>

And the official language is overlaid with his own prejudice against the lower castes like the Gowalas. Thus Girish Basu was fairly representative of the Bengali bhadralok: he was a fusion of the prejudices of his high-caste origins and the well-researched, "formal" and "codified" colonial discourse about the "criminals", both of which he absorbed without question. He also had the bhadralok aversion to violence, and cruelty, the two things paradoxically he could not hope to avoid in his chosen profession. Thus, though he did take recourse to punishment in the *thana* to extract confessions, Munshi Sheikh's case being an example, he actually ascribed his later misfortunes to his cruel behaviour towards his victims.

I kept him [Munshi Sheikh] without food in the burkundaz's lock - up the whole night, and did many other things which I am now ashamed to pen ... for those cruelties I am suffering so much in my old age. "To live by begging, and to reside under trees" is preferable, but let not the children of bhadralok work in the police-force.<sup>97</sup>

Interestingly, similar viewpoint is expressed by a Bengali prison doctor in a completely fictitious play, Jail Darpan where he also looks at his unpromising career and puts it down to the curse of the prisoners.<sup>98</sup>

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<sup>96</sup> Ibid., pp.185 - 95.

<sup>97</sup> Ibid., pp.110 - 11.

<sup>98</sup> Dakshinaranjan Chattopadhyay, Jail Darpan, Calcutta, 1875.

The validity of the evidence of the *darogah's* memoirs is a another issue that is difficult to resolve: but its credibility is corroborated by official sources. For instance, Girish Basu's early experience with the dacoit, Manohar, and his subsequent arrest and transportation, his involvement in a mutiny of the convicts aboard the ship "Clarissa", and the probability of a capital sentence, as related by the *darogah*, are all confirmed in official correspondence.<sup>99</sup> The details were blurred in the text, and Girishchandra was apparently under the impression that Manohar had engineered the mutiny aboard the ship, but the account otherwise tallied closely with the official reports. The Commissioner of the Tenassarim and Martaban Provinces wrote to the Government of Bengal, giving full details of the "capture" of "Clarissa", the murder of the master and his officers, together with the dispensable members of the crew, and the hijacking of the ship by the convicts with all the arms and ammunition on board.<sup>100</sup> However, Manohar was merely one of the Bengali prisoners, and not even accounted "dangerous", as there were other prisoners with reputations for dangerousness :

The convicts are stated to be 180 in numbers ... they are said to be Seiks, Puthans (sic), Rohillas, and such like with four or five Bengallies amongst them - they are armed with the twenty-five muskets they took from the Sepoys, and with all the fire-arms and other weapons they could find in the vessel ...

Viewing the desperate character of these men - their numbers and armed condition- I request ... the assistance of a military party to aid me in recapturing the convicts ....<sup>101</sup>

Girish Basu's image of Manohar as a "dangerous dacoit", his recording of the relief of the villagers, especially of the Brahmins, when he arrested him and took him off to the *thana* at Nabadwip, and finally ascribing the mutiny of the convicts to Manohar's

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<sup>99</sup> Superintendent of Alipur Jail, to Sec. to GOB, Calcutta, 30 Jan. 1854, 30, BJP, 9 Feb. 1854, IOL.

<sup>100</sup> Commissioner of the Tenasserim and Martaban Provinces, Lieut. Col. Sir Archibald Boyle, to Cecil Beadon, Sec. to GOB, Moulmain, 19 May 1854, 25, 20, BJP, 15 Jun. 1854. IOL.

<sup>101</sup> Cap. Tickell, to Col. Wahab, 18 May 1854, 63, 26, BJP 15 June, 1854. IOL.

machinations,<sup>102</sup> has no parallel in the official records, where the "dangerous criminal" was equated with up-country men, Sikhs, Pathans, Rohillas with reputations, in accordance with the martial races stereotype, and certainly not the Bengali Gowalas.

### **The Bhadrlok and the Jails**

While the jail and the lock-up seemed the solution for the chhotolok, there was a feeling of acute victimisation when the bhadralok were jailed, or handled by the police as the prelude to being jailed. The jails and the criminal courts were fairly established as the domain of the chhotolok, and the infamy of the people passing through them clung to the way the bhadralok perceived these institutions of control: "Uneducated and unintelligent policemen", remarked one paper in 1878, "pay no heed to the proper treatment of honourable and respectable persons".<sup>103</sup> The contrast to the chhotolok, who were seen to be the occupiers of this dangerous space, enhanced the fearful image of the jails as the embodiment of vice, quite apart from the harshness of jail discipline, and increased the sense of tragedy that surrounded the bhadralok who were tried in the criminal courts or were jailed. This enforced co-habitation with the chhotolok was crucial to the understanding of the "sacrifice" that marked out the trial and the jailing of the nationalists from the 1880s onwards.<sup>104</sup> The hero's reception given from the late 1880s to bhadralok nationalist prisoners standing trial and being given sentences of imprisonment has to be seen in this context.

A good example of the interplay of attitudes can be seen in some of the nationalists' jail diaries and memoirs. Upendranath Bandopadhyay's Nirbasiter Atmakatha was one such, recalling his own reception during his trial in the Alipur Bomb case in 1908-09.<sup>105</sup> From a quick description of Alipur Jail, to the dietary restrictions, the warders' predilection for bribery, Upendranath gave a graphic impression of the

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<sup>102</sup>Basu, Darogar Kahini, pp.53,54.

<sup>103</sup>Hindu Ranjika, Nov. 27, 1878, No.9, BNNR, 1878, p.4.

<sup>104</sup>Saratchandra Chattopadhyay: "Amaar Katha" in "Swadesh O Sahitya", published in Aug. 1932, in Sulabh Sarat Samagra, Vol.2, Calcutta, (fourth edition,1993), pp.1958-59.

<sup>105</sup>Upendranath Bandopadhyay, Nirbasiter Atmakatha, Calcutta, 1355 B.S, 1948.

mentality of a member of the bhadralok jailed as a political prisoner. The size of the cell - 5 feet by 7 feet, the lavatory facilities within this small space for the three prisoners, the crude diet, all evoked caustic comments from Upendranath. The prison-wall was described as the bane of their existence, for "It seemed to shout day and night - You are prisoners. Now that you have fallen into our hands, there can be no escape for you".<sup>106</sup> Jail discipline also came under his scrutiny, especially the rule which forbade communication with each other, and more particularly the behaviour of the warders, who insisted on silence, until "their ears were plugged by a piece of silver ... so far we had only heard about the eternal virtue of a piece of silver, now we witnessed it for ourselves ...."<sup>107</sup>

Upendranath Bandopadhyay also mentioned that the jailer, himself from the Bengali middle class, and on the point of retirement, was quite bewildered at having so many "bhadralok's children" on his hands.<sup>108</sup> The ordinary convict, too, had this distinction in mind when he spoke to the "political prisoners". While giving the news of the assassination of the prisoner and approver, Naren Goswami, by two other prisoners, Kanai and Satyen to Upendranath, an "old thief" had addressed him as "Baboo!" and then gave the information - "Naren Goswami has been chilled!"<sup>109</sup> It can therefore perhaps be said that the perception of the political prisoner as "different" and even while in prison, to be capable of maintaining the "bhadra" status, was not merely limited to the political prisoners. The warders and the general prison population shared it as well. Even ordinary by-standers remarked on the difference between the bhadralok and chhotolok prisoner, and the incongruity of their arrest and imprisonment. Nalini Kishore Guha's description of his arrest in 1910 for his involvement in the Dacca Bomb case and the march to Lalbazar *thana* - tied to a "common Brahmin thief", and accompanied by the police who did not show him much respect, indicated this. A woman passing by,

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<sup>106</sup>Kshirode Kumar Dutt, Biplobi Barindra Kumar, extract from Upendra Nath Bandopadhyay's Nirbasiter Atmakatha, Calcutta, 1965, p.40.

<sup>107</sup>Bandopadhyay, Nirbashiter Atmakatha, pp. 42-43.

<sup>108</sup>Ibid., p.66.

<sup>109</sup>Ibid., p. 73.

shocked by the sight of a member of the bhadralok being arrested and marched to the *thana*, also remarked, "Bravo! A rope around a bhadralok's waist!" In the lock-up, Nalini Kishore gave vent to the same feeling of contempt expressed by the woman. The Brahmin thief was still with him in the lock-up, whom Guha dismissed as "a strange creature of Krishna in this *Kaliyuga*, who had been caught several times because of practising the 'big trade'", Guha's euphemism for a thief. Thus the revolutionary was uncomfortable at forced cohabitation with people who could not distinguish between "mine" and "thine". He stated: "I have never seen so many sly creatures all at once in my life. I felt very uneasy in such company".<sup>110</sup> He deliberately emphasised that the Brahmin thief did not share his code, and pestered him for cigarettes and matches, which he, being of the bhadralok, did not possess.<sup>111</sup> This insistence on a certain code of conduct, on the non-smoking, puritannical image, made Nalini Kishore stand out as a member of the bhadralok, amongst the chhotolok jail-population, an emphasis he himself maintained on a personal basis.

### **The Challenge of the Lower Classes**

What the contemporary literature underlined was the instinctive obedience the lower classes rendered the bhadralok. This has been the subject of many of Saratchandra Chattopadhyay's essays and novels, to mention just one writer. Saratchandra felt himself to be qualified to undertake the task of giving voice to the grievances of the chhotolok because of his close association with society of Bengal: "I have travelled in many districts and villages of Bengal, and have collected many diverse bits of information. Big and small, high and low, rich and poor, learned people and fools, have all come within my purview ... my home is in the rural district, a zone where ninety percent of my countrymen stay ... I know the state of my country ..."<sup>112</sup>

This writer's tremendous popularity amongst the educated middle-classes,

<sup>110</sup>Nalini Kishore Guha, Banglay Biplabbad, Calcutta, (1923), 1969, p.50.

<sup>111</sup>Ibid.

<sup>112</sup>Saratchandra Chattopadhyay, "Swaraj Sadhanay Naari", speech in the Sibpur Engineering College, Sulabh Sarat Samagra, Vol. 2, 1328 B.S., 1931.



together with his nationalistic convictions, and a cynical assessment of the nationalist movement, of whom he was himself a representative, render his depiction of the "*Palli-Samaj*" (The Rural Society) convincing. Here the high-castes oppressed the low, and petty squabbles over land made brother turn against brother, while women were subordinate, and calumnies could be levelled at them with ease. Squabbles over petty gain resulted in the imprisonment of an idealistic younger brother in a trumped-up case, brought against him by the elder brother. The ryots, mainly Kaibarttas, (a low fishing caste), were oppressed and dismissed as the "worthless chhotolok", and their patience was shown to be at breaking point.<sup>113</sup> Sanatan Hajra, with three generations of servitude behind him, could refuse to falsely testify to the *darogah*, uttering prophetic words: "Those days have gone, Barababu".<sup>114</sup> Depiction of the rural unrest, when mere superiority of position was not enough to ensure the subservience of the chhotolok, and justly so, was one of the themes of Saratchandra's writing. This view was shared by many other intellectuals like C.R. Das at the local level, and Gandhi at the all-India level. Documentation for this can only be found in literature of this genre, with its curious blend of paternalism springing from the Bengali culture and the liberal values of the West.

But the protest of the chhotolok was not always "just". The helplessness of the latter had aroused the sympathy of the intelligentsia, like Saratchandra and C.R. Das, who saw them as helpless victims at the receiving end of a hierarchical society.<sup>115</sup> But occasionally the victims refused to fit the category of oppressed ryots, who were forced to accede to the zamindar's demand that they commit crimes, create riots, or fight. They were seen then as a subversive threat to the law and order structure which the bhadralok and the colonial government wanted to preserve. This was the uncomfortable side that writers of this genre did not take up. Direct and overt challenge to the law and order

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<sup>113</sup>*Ibid.*, 1322 B.S., 1915. Vol . 2, pp.1863-1865.

<sup>114</sup>*Ibid.*, p.1865. The attitude of the zamindar, Benimadhab, towards his "Sudra" ryots was expressed in a complete disregard for their life and aspirations. p.1863.

<sup>115</sup>*Ibid.*, "Smritikatha", Periodical *Basumati* , on "Deshbandhu Smritisankhya", 1332 B.S., 1925, p.1971. In a conversation with Chittaranjan Das, Saratchandra drew his attention to the condition of the Namahsudra, Malos, Nats, Rajbanshis, Pods.

structure from their own class could not weaken it so much as a threat posed to it by the chhotolok. Therefore the bhadralok aimed at the marginalisation of the "subaltern" classes. However, their own relationship with the colonial ruling class presented an identical, inverse position that replicated the chhotolok's relationship to the bhadralok in a strange parody.

When there was an inversion of the law and order situation by the chhotolok, though the whole structure of control was geared for its prevention, was seen to be a total subversion of authority. The example of the convicts capturing the "Clarissa", in Girishchandra's rendition of the incident and the colonial government's response was on the same plane. But while Girishchandra was not actively involved in the recapture of the convicts, the news of their subsequent hanging came as a vindication of authority. This vindication of authority was also seen in the belief of the thief, Chhira, that he could not escape from the hands of the British rule, "as he was educated, of a good family background, and therefore had some sense". But the colonial authority, close to the mutiny of the convicts, at the first news of the outbreak, did not immediately perceive the vindication, but only the overt challenge.

The English captain had been killed, also the Chief Officer and an European boy ... the convicts ... then ransacked the cabin, and destroyed the log-book and the register, and they have not left a scrap of paper with any intelligence of whereabouts the vessel might have been at the time.<sup>116</sup>

The deposition of the *khalasi* (deckhand), who had witnessed the mutiny, but whose life was spared because the mutineers needed his services, confirmed the lawless and desperate character of the convicts. The men who had been put in charge over the convicts, the *subadar*, the *havildar*, and the sepoys, were all killed. As the convicts were ignorant of sailing, the ship drifted and only after two days was land sighted. The convicts went ashore, and the remainder of the crew escaped. The *khalasi* could not see

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<sup>116</sup>W.I. Landon, Moulmain, to Captain D. Tapley, Master Attendant, 18 May 1854, 26.,BJP, 1854, IOL.

any leaders among them, as there were several giving commands.<sup>117</sup> The deposition of another *khalasi* revealed that the convicts had taken "all the Saib-log's clothes" along with the provisions and asked the *khalasis* to take them to "jungle Raja's country", where they thought they would not be pursued by the law and the police. By this time there had arisen a leader among the convicts, as he had killed the *Subadar*, and was therefore "wearing his gold necklace and sword and sash, and the captain's coat", all of which imbued him with authority, and the other convicts acknowledged him as their leader.<sup>118</sup> Thus, even though the convicts had shaken off the authority of the *Subadar* and the European crew, they sought to transfer the same authority by retaining the clothes, and the outer marks of authority, and thereby perpetuate it. Moreover, they automatically sought the shelter of the "jungle-Raja", who was presumed not to be under the control of the British administration. The idea of a "jungle-Raja" possibly suggested complete autonomy, as the king of the forest, and to these convicts this was important. There was, therefore, no disposition to overthrow authority, merely to replace it with a another more conducive to their vision of the world they would like to inhabit, and to which they could owe complete allegiance.

The murder of Justice Norman by Abdullah,<sup>119</sup> described Chapter Two, was again seen to be a blow at the maintenance of law and order, by colonial rule as well by as the *bhadralok*. It was easier to believe that he had murdered out of religious fanaticism, which explained his mental calm in the face of the colonial judicial proceedings. To prove his fanaticism, recourse was taken to phrenology, and note was taken of the "conical shape of the man's head", which spelt that "the bump of religion is more than ordinarily developed in him".<sup>120</sup> Without such reassurances, the spectacle of a calm prisoner sentenced to death might have proved to be too disturbing for the *bhadralok* psyche.

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<sup>117</sup>Captain Tickell, to Colonel Wahab, Commanding Tenassarim Provinces, 18 May, 1854, 26, 63, BJP 1854, IOL. The deposition of Peerbuksh, s/o Nemoolia, aged about 30, of Dinapur.

<sup>118</sup>*Ibid.*, deposition of Sheikh Suraj, aged about 30, BJP 1854, IOL.

<sup>119</sup>*Hindoo Patriot*, 2 Oct. 1871, p.316.

<sup>120</sup>*Ibid.*

At the other end of the spectrum, by the twentieth century, under the harsh certainty of punishment under the colonial rule, when the net had been spread wide to strain all the possible criminals, a clearer objection to the defiant attitude by the chhotolok prisoners was manifested. While Babu Chandidas Ghosh, the Police Magistrate of Sealdah was trying Abdul Rajak, a thief, he "quietly took out a shoe which had been concealed under his armpit" and "flung ... [it] at him to the utter surprise of all present in Court". He was of course "immediately handcuffed" and removed, but when he was asked for an explanation for his aberrant conduct he said: "I asked the court to inspect the place of occurrence and also to remand me to the Presidency jail which the Magistrate did not hear; for this I got annoyed". When he was asked to reveal the source of the shoe, he said he had obtained it with the aid of God. Thus the straightforward statement of the motive for the protest, and the manner of the protest earned him the sentence of rigorous imprisonment for eighteen months with the "first and the last week of imprisonment to be spent in solitary confinement". This also demonstrated the Bengali magistrate's concern with the preservation of law and order.<sup>121</sup>

A similar attitude was demonstrated by Matacharan Gowala, "an up-country accused who was being tried on a charge of bad livelihood along with five other persons". Matacharan was an old offender, and while he was being tried by the Bengali Magistrate, Nibaran Chandra Ghatak, he suddenly grew furious and shouted, "You *sala*, don't listen to us, and always accept the police version", obviously being a cry from previous experience, as he was being tried on a charge of "bad livelihood". The result was the same as the previous instance and he was given a jail sentence for assault "of a public officer while in the execution of his duty", but the convict refused to be cowed down and threatened that "when he came out of jail, whenever it might be, his first object would be to kill him and be avenged".<sup>122</sup>

This open anger and defiance was a part of the underworld, but there was on the whole resigned chhotolok acceptance of being tried and jailed justly or unjustly. This can

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<sup>121</sup>Bandemataram, 4 Jul. 1908.

<sup>122</sup>*Ibid.*, 15 Oct. 1908.

be seen from the reaction of Shamulga Hazam, a convict in Alipur Jail, and who was giving evidence on the death of Goswami, one of the Alipur Bomb-case prisoners. Goswami had turned informer and had been killed by two other revolutionaries, Kanai and Satyen. The witness said he had been convicted for a "gang-case" for seven years. An ordinary convict giving evidence against political prisoners created a strange situation. There was an attempt to negate his information on the part of the authority, while at the same time the thief's physical presence at the site made his evidence invaluable. Therefore, when Hazam stated that he had tried to stop Kanai from shooting Naren Goswami, Ashu Babu (the public prosecutor), irritated, said: "*Tomar ar Bahaduri dekhate hobey na*" (Stop, there is no need for you to show off).<sup>123</sup> And thus the sarcasm when Hazam said simply "pointing to Ashu Babu and Inspector Gupta", "*Ai Babuta Jail dieche*" (this babu has put me in jail) - and the babu said "he remembers that".<sup>124</sup> The appreciation of the sarcasm by the people present in the court revealed a shared sense of the ridiculous situation of a convict giving evidence which had to be taken seriously by the court. The incident demonstrated a common attitude of derision. Instead of Girish Basu displaying mockery in a "secret smile" on an individual basis in the nineteenth century, it was a collective, derisory laugh in the early twentieth century.

### **Dacoit "Confessions": 1926 - 1936 : Bhadraklok and Chhotolok**

The analysis of the path or trajectory which led to the prosecutor and a court-room full of people share a sense of the paradox of a convict being elevated to a position of importance is crucial to this section. Even though the thesis does not go beyond the year 1910 in terms of actual chronology, it is important to take stock of the two decennial police reports, marking the changes of the 1920s and 1930s, and thus pinpoint the manner in which the hegemonisation of the bhadraklok values and norms had taken place in the site of the *thana*, as demonstrated in the confessions of dacoits. These confessions

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<sup>123</sup>*Ibid.*, 9 Sep. 1908. Also see Surendranath Banerjee, *Nation in Making*, Calcutta, London, 1927, pp.70- 71. He spoke of Ashutosh Biswas, who was the public prosecutor in the Alipore Bomb Case. For this perceived collaboration, he was "the victim of an anarchical outrage".

<sup>124</sup>*Ibid.*

therefore indicate the manner in which both the colonial experience and the bhadralok attitudes had fixed the parameters of the low-caste identity, beyond which they could not project themselves. Thus they remained chained to the identity of the chhotolok, because of their language, their habits of drinking and open moral looseness, all the attributes seemingly rigorously eschewed by the bhadralok. This attitude of acceptance is reflected in the "confessions" of the potential jail-goers as well. This section deals with the gang-cases, which, as seen in the case of Shamulga Hazam, generally ended in sentences of five to seven years. On the other hand, the higher castes always had a different identity which they could slip into and disclaim their criminality. The confessions, being conveyed through a more official channel, conform to the linguistic requirements of the official legal language, and are therefore rendered uniform, but the trend set by Girish Basu was continued in the 1920s and '30s. The most glaring difference is in the wide variety of names which include higher castes as well as lower castes. At the same time, there is also another deeper domain, that of the bhadralok discourse, enunciated over the mid-nineteenth century and which continued to specify a stated notion of criminality into the twentieth century. It sought to define the different areas of criminality and the identification of the criminals, through the colonial discourse that came filtered through the bhadralok culture. The emphasis on bhadralok-status is made by a "bad character" in a confession, Nimai Chandra Ghosh, acknowledging his own complicity in a string of dacoities that had taken place in Bankura in 1926.<sup>125</sup> The confession indicated, in a manner resembling Girish Basu's Chhira, that a dacoit still sought refuge in his "bhadralok" identity to dissociate himself from the gang of dacoits he had previously associated with:

I am a son of a Kayastha. Being a son of a bhadralok I mixed with  
the party of the lower-class people and have done these things. I

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<sup>125</sup>Brief Histories of Dacoity Cases in the Bankura District, 1926, Copy of English translation of confession made by Nimai Chandra Ghosh of Golor, police-station of Raipur, accused of Raipur police station case No.2, dated 16th December, 1926, section 395, I.P.C., before Babu S.N. Bose, Deputy Magistrate, Bankura, on 3 Dec. 1926, pp.23-30, Bankura Police Station.

confess everything ...<sup>126</sup>

He thus claimed to be a member of the bhadralok class, and declared that he was propertied - "We are owners of two villages and we also have money".<sup>127</sup> He used this as a lever to get himself a better bargaining position with the police. Nimai declared he was unaware of the "criminality" of his gang's pursuits, and that he first got involved in "criminality" without realising the nature of their activities. The lower classes had "entangled me in their party in the hope that when they would fall in difficulty I would spend money and save them".<sup>128</sup> The distrust of the lower classes crept in even before the prospect of a successful robbery, when Nimai took violent exception to a low caste called the "Ghorai",<sup>129</sup> present in large numbers in the dacoity party. He declared "I said that I would not go with the Ghorais of our village".<sup>130</sup> He insisted that he had personally never volunteered to commit a dacoity, and his first crime was involuntary, since he thought upto the last minute that he had accompanied his friends to seduce a woman. The insistence on his own innocence occurred at every stage of the narrative- "When I was first taken to commit a dacoity", he declared, "I hardly knew anything of it at the time".<sup>131</sup> And, "When at the time of entering the house Rashik was assaulting and demanding money I asked him "What is this?" he answered "It is so. We are up here for this, not for a woman".<sup>132</sup> Nimai Ghose tried to cling to his respectability even while being on the point of being jailed and hoping for leniency by insisting on his essentially non-criminal identity as a bhadralok: "I cried and said to Daroga Babu that without suspicion I have perpetrated these things and I would disclose all about it".<sup>133</sup>

Thus, as late as 1926, when there was quite an influx from the higher castes into

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<sup>126</sup> *Ibid.*, p.27.

<sup>127</sup> *Ibid.*, p.27.

<sup>128</sup> *Ibid.*, p.27.

<sup>129</sup> Risley, *Tribes and Castes* Vol. I, pp. 280 - 81, This group could be either a local variation of Ghatu, a section of Mals in Bankura,(p) or the sub-caste of the Gowalas called the Ghoraila.

<sup>130</sup> *Brief Histories of Dacoities.*, p.25.

<sup>131</sup> *Ibid.*, p.24.

<sup>132</sup> *Ibid.*, p.24.

<sup>133</sup> *Ibid.*, p.27.

crime, the criminals by and large retained a low caste identity. This is evident from the confessions and the police records of the gangs in operation. Apart from the Swadeshi dacoits of 1906-07, the criminal upper castes, while taking to criminal pursuits, did not slip easily into a criminal identity. What also emerges from the confessions is that the trend of the lower castes being treated as criminal had a certain basis in fact. The majority of the gang-members all had lower-caste names, high-caste names occurred infrequently. However, from the confessions, it seemed fairly clear that the lower castes, like the bhadralok, also drifted into crime. When caught by the law though, they did not claim bhadralok status. The accounts of the crimes committed by them were bald and matter of fact.

My name is Bagal Bouri, father's name late Tinkari Bouri, of Parsha, police-station Faridpur. For the last two or three years, I used to commit theft in trains along with Hemendra Dom. Tarani Dom, Gobinda Dom, Nidha Dom, Pashu Shain, Nuna Shain, Herembu Da, Dakshineswar Da, Kristo Da, Ratan Samanta, Tinu Chakraborty and Jugal *alias* Kata Bouri of our village.<sup>134</sup>

Consisting almost exclusively of low-castes - Doms, Haris, and Muchis - there were no pretensions to genteel habits among the dacoits. Openly subscribing to behaviour which would not be acceptable to a higher caste - Bagal Bouri declared "during the month of *Ashar* I went to drink wine in the shop of Pashu Suri. There I saw two Haris drinking wine ...", and they planned a dacoity. There was a large cross-section of castes in the gang, but the lower castes were aware of the differences in caste, as can be seen by the remark, "One of the Brahmins was of medium complexion and fat, another of fair complexion",<sup>135</sup> and from the fact that the higher castes wore *pagrees* when they had entered the house. But, even though they, (i.e. the Muchis), and Bagal Bouri had stood on guard outside the house, Bouri stated: "the Muchis and I got nothing. Radha Gobinda

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<sup>134</sup> *Ibid.*, Translation of statement made by Bagal Bouri, police-station Faridpur, district Burdwan, before Sub-Inspector M.F. Huque of Mejhia police-station in connection with Mejhia police-station case No.1, 4 Nov. 1926, pp.15-17.

<sup>135</sup> *Ibid.*, p.16.



said to us 'You did not enter the house, so you will get nothing'. Neither were they told "how much money they had got in the dacoity".

Thus even within a dacoity gang, the power structure was loaded in favour of the higher castes, who had the right to wear *pagrees* or headgear and receive the major share of the booty. The lower castes had, more often than not, to accept such an unequal distribution of spoils, while sharing the danger of getting caught. Thus Bouri and the Muchis, after a dacoity, had to entreat the boatman to take them across the river, as they could not pay for the fare.<sup>136</sup> But despite such discrimination, Bagal Bouri could not ignore the summons issued by Radha Gobinda: "Radha Gobinda Da [Big Brother] came to my house at about 10 o'clock and told me that I would have to go to Raniganj with them by train to commit a dacoity ... I went to Raniganj with them ...."<sup>137</sup>

For the case registered "true", before Bagal Bouri had "confessed", the police report confirmed the presence of people from a different class, thus corroborating Bagal Bouri's later story as true: "They spoke Bengali and addressed one amongst them as "Jamadar Babu". They looked like local low-caste people, but two of them appeared to be of men of better class".<sup>138</sup>

In 1936, the class composition of the gangs had changed, and there were even more reports than in 1926 about "bhadraloks" who had committed the dacoities. The police reports in 1936, far more detailed than the reports of 1926, since the concern with the law and order situation was much greater, showed that the lower castes were operative in the crimes, but the leadership was quite often taken up by dacoits perceived to be Swadeshies by the administration, and by the people themselves to be different. In 1936, the police administration sought to apprehend the Swadeshi criminals.<sup>139</sup> The detailed set of police reports of 1936 reflects the concern of the authorities with the "law and order" situation. In sheer numbers, the increase was remarkable. In Bankura district

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<sup>136</sup> *Ibid.*, p. 16.

<sup>137</sup> *Ibid.*, pp. 16 - 17.

<sup>138</sup> S.R. Case No. 8 of 1926, p. 7.

<sup>139</sup> Percival Griffiths, *To Guard My People. The History of the Indian Police*, London, 1971, pp. 215-16, 232 - 36.

alone, the "true special reports" in 1936 numbered 94, while in 1926, there were only 21 special report cases. There was, however, a distinct difference between a "swadeshi" dacoity and an ordinary dacoity, discernible in the different patterns of behaviour. The nationalists did not make a noise, nor did they indulge in abusive language: the dacoities were performed in silence and verbal exchanges were in low tones. There is a diametrically opposite mode of reporting by the complainant, as the identity of the dacoits was established by the manner in which the dacoities were committed-

They threatened the inmates with *kataris* and *tangis* and asked them to keep quiet ... They spoke Bengali and looked like *bhadraloks*. They said that they had come to commit the dacoity at the request of the villagers and retreated towards the west...<sup>140</sup>

Certain particulars were specifically mentioned in the reports, since the "complainants" made the distinction between the ordinary criminal and the bhadralok dacoit. The ordinary dacoits, in spite of taking to Gandhi *toopies* and *fatuas*, were obviously low-class to the complainant, principally because of their speech, which was crude and abusive, spoken with a strong local accent. The emphasis was often on speech, and the local people could identify local dialects, rough and "filthy language", accompanied by a deal of noise. Sarada Mandal, a complainant stated on the basis of these characteristics: "the dacoits all looked look like Haris and Bauris ... local low class people ... They spoke in broken Hindi and used words 'Goonda Bhago' at the time of retreat".<sup>141</sup> Likewise, the fear of being caught made criminals from higher castes much more cautious in committing crimes, which automatically involved low tones, and an attempt to conceal their identities.<sup>142</sup> Giribala Debi knew by "low voices" and hidden faces that the dacoits were of bhadralok status.<sup>143</sup>

Sometimes the ordinary dacoits even ate the *chira*, *moory* and fried fish generally

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<sup>140</sup> Brief History of Dacoity Cases, 1936, S.R. Case No. 3 of 1936, p. 4.

<sup>141</sup> *Ibid.* S.R. Case No. 16, Gangajalghati P.S. Case, 4 Mar. 1936, section 395, I.P.C., Date of occurrence, 3 Mar. 1936, place of occurrence, Natungram, 8 miles west of police-station Gangajalghati.

<sup>142</sup> *Ibid.*, Confession of Brindaban Rai, son of Joshoda Rai, p.62.

<sup>143</sup> *Ibid.* S.R. Case No. 40 of 1936, p.61.

kept in the kitchen, after robbing the house of its valuables. This was a sure indication of the economic status of the criminals, who had no intention of decamping with the booty, without having a free meal first. It seemed a common practice after a dacoity for the culprits to eat "butter and curds", or whatever was handy in the kitchen. Also the goods carried away indicated the economic status of the dacoits - therefore "two pairs of shoes, *ghee*, molasses, *chiras*, and fried rice", or even "clothes only, but no cash",<sup>144</sup> surely proved that these things were in short supply for these dacoits, and that hunger and want underlay such dacoities.<sup>145</sup> These dacoities, though following the awesome pattern of big dacoities, with torches, axes, and other weapons, were therefore conducted for other purposes than for making large financial hauls. Sometimes men who dealt in foodstuffs were attacked and their goods taken away from them - for instance, the complainant Kali Mahato dealt in rice and the dacoits arrived with gunny bags to carry away "rice, *ghee*, silver ornaments, utensils, sheep, molasses and oil valued at rupees 35-6".<sup>146</sup> In a confession, Darbari Sardar described his "looting" of the house of the complainant, Sitanath Gorai, indicating the priorities of the chhotolok, where their main priority was food, "two gunny bags of rice, a basketful of rice, two rams and some utensils in a gunny bag". The disposal of the loot was simple, as "The rice was divided sitting in the jungle". The rams were killed and the meat distributed.<sup>147</sup>

The confessions coming from the dacoits again reveals clearly that the "low-classes" actually referred to themselves as *Kamars* (blacksmiths), *Haris* (untouchable), *Suris* (seller of liquor), *Telis* (seller of oil), drank together, and on such occasions, "conspired together" and planned dacoities. More often than not, the mention of castes or caste-occupations did not mean anything derogatory : for them it was just a means of identification. When Pelaram Khan in his confession before the Sub-Inspector declared

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<sup>144</sup> *Ibid.*, Confession of Hansha Roy, in connection with the Chhatna P.S. Case No. 3, 19 Mar. 1936, p. 42.

<sup>145</sup> *Ibid.*, S.R. No.22, of 1936, p.42.

<sup>146</sup> *Ibid.*, S.R. case. No. 27 of 1936. p. 51.

<sup>147</sup> *Ibid.*, Statement of Darbari Sardar, son of Badal Sardar of Manhara, case No. 8, 25 May, 1936, special report case no.48, p. 15.

that though he was not present in the "Khirsole dacoity", "I heard from the women of Khirpai that the Bagdis of Hasulia and Bauris of Banddiha were present", he only meant to refer to their identity.<sup>148</sup> But occasionally there was, from the relatively higher castes, a contempt for the "lower caste", and a reason for a dacoity then could be as simple as vengeance on a "lower caste" individual for daring to claim dues which were owing to him:

At this time Kefait Nagdi said, "Lalu Kulu of Gurulia insulted me and he being a Kulu by caste, we cannot tolerate his insult. That Kulu has used insulting language as I did not meet his dues after taking goods on credit from his shop. A dacoity is to be committed in his house."<sup>149</sup>

The friends had, by that time, had dinner, along with a few bottles of wine, and the declaration met with approval. Hari Pal stated - "On this we, about 14 to 15 men, in a drunken state, crossed the field behind the Kulu's house ...."

The confessions generally came from the disgruntled members of the gangs, who were not happy with the distribution of the proceeds from the robbery, or simply a fear of the police. Even the fear of being caught by the villagers was second to the fear of being arrested. When caught, the respect shown to *Darogababu* and his authority was phenomenal, especially from dacoits like Nimai, the Kayasth, with a hang-over of a non-criminal identity due to his class-origins. Also, from these confessions, there is ample evidence for supposing that most of the "lower classes" belonged to the "suspect" groups, who had been endowed with criminal identities. Many of them had been to the jails, many were "Surveilees", and once a charge-sheet had been drawn up against them, they were openly under suspicion by the villagers. The villagers advanced various names after a dacoity had been committed, and more often than not, some of the gang members did belong to the locality. In the "confessions" many admitted that they had not entered

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<sup>148</sup> *Ibid.*, Confession of Pelaram Khan, in connection with Chhatna P.S. Case no.1, 10 Feb. 1937, p.12.

<sup>149</sup> *Ibid.*, Confessional statement of accused Hari Benia, alias Hari Pal, in connection with P.S. Case no.4, Special case no.44 of 1936.

the house for fear of being recognised. Many suspected members of the gangs were from declared "criminal tribes", and were the inevitable suspects in any dacoity case. The judicial system was geared to seize the most likely candidate in a robbery, and members of a "criminal tribe", even if their complicity was not proven, generally received a jail sentence on grounds of suspected bad livelihood. For instance, for a robbery that occurred at the house of Bibhuti Bhusan Palit, on 22 July, 1936, three men, Panchanan Dey, Hrishi Kumar, and Kanta Mandal of Majuria, police-station Raipur, who had been marked out under the CTA, were given "rigorous imprisonment" as they "were found absent from their houses by the patrol constables". Panchanan Dey was convicted in four cases under section 22(2) (a), CTA, and was sentenced to 10 months' rigorous imprisonment on 16 September. Hrishi Kumar and Kanta Mandal got 4 months' rigorous imprisonment each under section 22(2) (a), CTA, on 24 September 1936.<sup>150</sup>

By 1936, an interesting trend had emerged: many of the gangs belonging to different castes were put under the CTA.<sup>151</sup> It can be seen in the fact that Banku Behari Mukherjee, of Brahmattar, (a brahmin), police station Pancha, district Manbhoon and Gajan Bhumji, of Belut, police station Indpur, district Bankura, were both under the CTA. This feature characterising the flexibility of the CTA was observed in the United Provinces as well.<sup>152</sup> Thus in Bengal, as well as in the United Provinces, men were being convicted under the CTA who belonged to gangs of dacoits. These then were the profiles of the jail-goers in colonial Bengal. Of men like these the bhadralok opinion was low, and in 1908 the necessity of the jails to be harsh in order to control people like these had become a conviction. The revolutionary Bande mataram could therefore state: "Prisons would be holiday homes for our criminal classes unless they were designedly brought down to the level of the most callous, brutal and roughest of the people".<sup>153</sup>

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<sup>150</sup> *Ibid*, S.R. Case No. 63 of 1936, p. 109.

<sup>151</sup> *Ibid*, S.R. Case No. 64 of 1936, pp. 110-111.

<sup>152</sup> A. Mukhopadhyay, "Criminal Tribes and British Policy, 1871-1928", Unpublished M.Phil. dissertation, J.N.U., 1989, pp. 117-119.

<sup>153</sup> *Bande Mataram*, 27 Aug. 1908.

## Conclusion

The bhadralok had initially attempted to establish the lower castes as the section on which the legal process and the penal system worked. But as the society witnessed a gradual mix-up between the upper and lower castes in the criminal courts and the jails, there evolved a further criteria to mark off the jail-going "bhadralok", who were political prisoners, with a superior moral code. The difference now turned on a different code of behaviour. Therefore Ullaskar Dutta, in Alipur Court, could declare: "I am by caste ... a dairy farmer. It sounds better than *gowala*". The status of a patriot and a revolutionary had imbued him with a code of behaviour which led him to claim boldly: "I used to prepare explosives".<sup>154</sup> In an inverted code of behaviour, a Brahmin thief fell back on his caste privilege: "I am Brahmin by caste". In a diametrically opposite moral vein, he refused to take responsibility for his crime and complained: "I have fallen in the company of budmashes who influenced me to take cocaine which influenced me to steal".<sup>155</sup>

By this time, then, caste and class superiority was not the sole determinant of "criminality" and the "bhadralok" status. The most highly principled nationalist could be charged with grave crimes technically, for they were involved in dacoities and assassinations. But an important distinction was made between them and the general jail population, for the political prisoner was "not ... a personally degraded wretch. He has not lost his personal honour. He is not brutalised".<sup>156</sup> There was, therefore, an established model of behaviour - to which the "jail-going bhadralok" would have to subscribe. Abstention from smoking and drinking, manners of speaking, moral rectitude, were therefore all determinants of the average bhadralok political prisoner. It was the most conscious attempt to assert the class identity through a mode of behaviour in a domain that would lent itself visibly to such demarcation between the bhadralok and the chhotolok. Thus the "*Bhalo Bhadraloker Chhele*" or the "good boy" syndrome was established through the revolutionary circles of Bengal.

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<sup>154</sup>Bande Mataram, 6 May, 1908.

<sup>155</sup>Ibid., 14 Aug. 1908.

<sup>156</sup>Ibid., 27 Aug. 1908.

This was the most important step towards the bhadralok domination of the prisons, the mark that set them apart from the chhotolok prison population who drank, smoked, cursed, or openly sought sexual adventures, and thereby wore their criminality like a badge.

## Chapter Four

### Questioning the Judicial System

It has been established through the previous discussion that from the mid-nineteenth century the Bengali bhadralok had attempted to create for themselves a non-criminal identity. The targets of the colonial criminal courts and jails - dacoits, thieves, and robbers - were easily identified with bhadralok fears about lawlessness and insecurity of property. This was one of the chief reasons why there was acknowledgement of the colonial administration's law-making and law-enforcing powers. Thus, however much it violated the cherished norms and practices, the colonial state still remained supreme in bhadralok minds in the early and mid-nineteenth century. This chapter will examine the erosion of this faith and acceptance of the "rule of law" over the course of the mid to late nineteenth century. At the same time there will be an attempt to show the ambivalence of the bhadralok towards the courts and jails because of the perceived need for the operation of the rule of law. There will also be an exploration of how people from all layers of society influenced the everyday workings of the institutions: there was a battleground, as Ignatieff suggests, between the institutions and those subject to them,<sup>1</sup> and this added further complexity to the supposedly monolithic imperial notion of an impartial "criminal law", which professed to treat all the subject population alike.

The questioning of the legal and penal institutions began so gradually that it is difficult to attribute the development to a specific period. Some of the early nineteenth century poems, analysed by Gautam Bhadra,<sup>2</sup> reveal the acceptance of the new political regime, but recast in terms of the traditional, hierarchical power structure. These poets, recording early impressions of the colonial legal and penal institutions, straddled two

<sup>1</sup>Michael Ignatieff, A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850, New York, 1980.

<sup>2</sup>Gautam Bhadra, "Prak-Rammohan Yuge Companir Shasaner Prati Koyekjan Bangali Buddhijeebir Manobhab", Bangla Academy Parishat Patrika, No.5, (Pancham Sankhya). 1992, pp.61-82.



different world-views. Striving to cope with a changing world, it was natural for them to transpose a new experience into the familiar framework of a hierarchical world. The novel style of official terminology was perceived to be merely a superficial change. There was no attempt to identify the power that was creating sweeping changes in their lives. Hence, Puranic idioms were used by the poets to express their acceptance of English rule.<sup>3</sup> In spite of the language barrier, English rule was seen as the repository of the "rule of dharma", which perhaps fitted all too readily into the English "rule of law", and was perceived as a direct translation of the "*paritranaya sadhunam vinashaya ca dushkritaam*" (the saving of the good, and the destruction of the wicked),<sup>4</sup> something which *yavana* (Muslim) rule in Bengal had failed to provide. There were moments of uneasiness with the completely different legal and penal set-up of the colonial power: the *dharmabatar*, or the judge spoke a totally different language, and the court's army of intermediaries, made the people feel isolated from these institutions. Yet such discrepancies were smoothed out and rationalised by these early intellectuals as the inevitable evils accompanying the *Kaliyuga*.<sup>5</sup> To them colonial rule was not the harbinger of a higher civilisation, philosophy and rationality. It was through Rammohan Roy, who adopted the "rule of law" in accordance with liberal intellectual trends in Europe, that the language of loyalty and the expectations of the new intellectuals changed, along with the changed perception of the nature of the regime. This development, in turn, brought about a keener perception of the forms of "injustice" the colonial government practised, judged by the professed "rule of law".

But this awareness remained split along two planes. Later intellectuals were engaged in tearing down the edifice of the "rule of law", through criticism of the courts and jails, and their mode of functioning from the perspective of Western liberal thought. But it is pertinent to question, on the lines taken by Bhadra, the depth of this change and

<sup>3</sup>Partha Chatterjee: "Claims on the Past: The Genealogy of Modern Historiography in Bengal", in D. Arnold and D. Hardiman (eds.), *Subaltern Studies, VIII*, Delhi, 1993, pp.15 - 16.

<sup>4</sup>*Srimadbhagavatgita*, Gyana Yoga, Chaturtha Adhyaya, tr. Swami Jagadishwarananda, ed. Swami Jagadananda, Calcutta, 1980, p.104.

<sup>5</sup> For Kaliyuga see, *Shri Shri Chandi*, Subodhchandra Majumdar (ed.), Calcutta, 1977, p.465.

to consider the ambiguity of responses to the courts and jails. The middle classes, as the classes most conscious of the advantages of colonial rule, were, precisely for this reason, the best example of this duality. This chapter tries to see this duality present in the manner in which the *bhadralok* examined the legal and penal institutions, first in the manner of liberal rationalists, trained in Western concepts of liberalism, and then, with the growing disillusionment, through the gradual incorporation of the Puranic concept of the *dharma rajya*, an enduring strand of political thought. The outright questioning that was heard in the courts of law and the jails at the time of the Swadeshi movement in Bengal can be seen against this background of the earlier pre-Rammohan phase of a hope in the newly established power that would usher in the *dharma rajya*. By 1905 rationalist questioning of the legal and penal institutions had come to seem insufficient. The failure of the "rule of law" to provide justice and the oppressive nature of the courts and the jails, which had been attributed by the pre-Rammohan intellectuals to the gods, were brought home to the alien administration. Thus the lament of the early nineteenth-century intellectuals about the perversion of justice was put down to the times they lived in:

The curse of Bharat on the subjects, the major sorrow of the *Kaliyuga*

Makes all good and bad things happen which turns even the justice of  
Dharma into a charade, with the *baakrand* [word prostitute] having the final say  
The *baakrand* came out called the prisoner and said

Today your case was discussed.

There were no facts whatever they [*baakrands*] said was true

Like showing things to a blind man.<sup>6</sup>

The middle-class intelligentsia of the late nineteenth century, however, could and did hold the colonial government responsible for handing out "injustice".

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<sup>6</sup>Two poems by Ramprasad Maitreya, the first cited as Maitreya (1) taken from "Prachin Gramya Kabita Sangraha: Natorer Kabita", *Raktapur Sahitya Parishat Patrika*, No. 4, 1314 .B.S., Second poem in *Aitihasik Chitra*, published Prasanna Narayana Choudhury, Akshaykumar Maitreya (ed.), 1:1. Jan. 1899, cited as Maitreya (2). This poem styled as Maitreya (1), p. 180.

### The Pre-Rammohan Phase

The acceptance of the new administration during this period occurred at different levels. The poems discussed by Gautam Bhadra reveal a critical evaluation of the administration of the East India Company that touched the subjects at several points. For instance, the taxes, still collected through the traditional framework, with the *dewan* as the intermediary, were a familiar source of friction. A village poet, Ratiram Das, penning the *dhing* (protest) in Rangpur, showed an awareness of the complete dependency of the Company agent, Goodlad, on the *dewan*, Raiballav. Goodlad was seeking to maximise profits, and the *dewan* was the best person for the purpose. The ryots were against negotiations through the *dewan*, the source of all their problems while Goodlad was reluctant to dismiss the *dewan*. This was not perceived to be *inchaaf* or justice by the ryots. They questioned the agent on his reluctance to hand out justice, a simple enough act of dismissing the rapacious *dewan*: "You hand out *inchaaf* looking at a book, then why are you like this".

The resolution of the confrontation was satisfactory once they had cornered the *saheb*. The *dewan* was dismissed, much to the satisfaction of the ryots:

"The *saheb* said from today the *dewan* stands dismissed,

On hearing this, the *praja* felt the heavens to be at hand.<sup>7</sup>

At this stage, the new power-structure was understood using the old reference-points of power. It was perceived that Goodlad, the agent, imposed his own tax demands, and punished at will, without any sanction from the distant *huzoor* (master) in Calcutta, after the practice of agents in the traditional hierarchy.

A perceptible change, unlike the collection of taxes, manifested itself in the legal and penal administration, reflected in the work of a poet of Nakalia village in Pabna district. Yet the change itself was not seen as a completely new experience. The poet knitted the new legal and penal institutions, manned by differently-styled officials, into the old frame of reference:

Delhi became Calcutta, the *Badshah* sat there,

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<sup>7</sup>*Ibid.*, p.63, referring to Ratiram Das's "Raktaapurur Jager Gaan".

Changing his title [khetab] for that of *Bada Saheb*...

The collector in the treasury, the judge in the *Adalat*

Dispensing criminal justice according to law.

Theft, dacoity, *phelashani* [tyranny], riots, looting, murder,

All this was handled by the *faujdari*.<sup>8</sup>

This was the accepted paraphernalia of the new power; thus the right of the judge to dispense justice was not challenged. Indeed, the judge was seen to occupy the place of Dharma, the shastric, Puranic and traditional figure of justice: "I understood it was [his] right [hak], The judge is dharma incarnate".<sup>9</sup> Though differently styled, the *joj* (judge) fitted into the image of the reincarnation of dharma. Hence his right to dispense justice was undisputed. A new development, which turned the new judicial institution into a feared and incomprehensible domain, was the mushrooming of a host of intermediaries who sprang up as interpreters of the new judicial system - the *vakils* and *mukhtars*. They were called, appropriately enough, *baakrand*, or word-prostitutes in the poem. This complete divorce of the village people from the legal process by the *baakrand*, which directly affected them, was angrily noted by the village poet:

Fate turned fraud      constructed the *baakrand*...

If the *baakrand* had not been there it would not have been like this

everybody would have gone inside[courts] and have their say.

The rule in courts is terrible complaints are handed over to a third person

the judge hears [them] through the *vakil*.

If the judge asks a question [the *vakil*] uncomprehending, counter-questions

Standing outside [the court] I die of grief.<sup>10</sup>

The complete alienation of the people from the legal procedures introduced by the new power was manifested, moreover, in the graphic description of the court, the helpless position of the prisoner, rendered immobile by a ring of guards, and the fact that nobody,

<sup>8</sup>Ibid., Maitreya (2), p.97.

<sup>9</sup>*Ibid.*, Maitreya (1), p.64.

<sup>10</sup> *Ibid.*, Maitreya (1).p.183.

not even the prisoner, knew what was going on till the court was over : ✓

All the people [watchers] outside the court sees

*Yama* [the god of Death] sitting in his court

Whatever is the fate in store for anybody is not clear

It is evident only after the *saheb* has left.<sup>11</sup>

The terror of the people, on confronting such a meaningless string of words, could find expression only in a parallel comprehensible to the world the ordinary villager occupied - the whimsical will of the gods. Hence the depiction of the court and its conduct was played out in terms of religious ritual, with the judge as *Yama*, having the power of death over the prisoners, and the court officials as his assistants. The prisoner was perceived as the sacrifice, who was duly sentenced, terrified, after the ritualistic mumbo-jumbo had been pronounced, which was equally obscure to him as to the observers. During this ritual, the music was supplied by the clanking of fetters.<sup>12</sup> The prisoner was ordered to listen to the sentence:

"Listen to the meaning of the sentence you had committed this deed

For that you have been brought to this door [to the court].<sup>13</sup>

Some people were jailed, some transported, and some released;<sup>14</sup> yet others were whipped, the victim even more like a sacrifice than the rest, as the punishment meted out was visible to the observers:

With the 'Chit' [specifying the punishment?], the sacrifice [prisoner] is

brought, one is pulling on the rope

The [prisoner's] chest and the wooden frame are lashed tightly together.

The hands [of the prisoner] are pulled northwards by two persons

Jafar the *khalasi* [sailor] starts whipping.<sup>15</sup>

The condition of the prisoner tied to the whipping triangle while the lashes rained down

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<sup>11</sup> *Ibid.*, Maitreya (2), p.99.

<sup>12</sup> *Ibid.*, Maitreya (2), p.100.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, Maitreya (1), p.183.

<sup>15</sup> *Ibid.*, Maitreya (2), p.101.

was vividly described by the poet, perhaps indicating that he had witnessed one of these "rituals":

Lash after lash fell; 'mercy mercy' cries he [victim]

'I'm dying I'm dying, oh my father, oh my father'.

Heavy whipping means thirty-nine strokes, some get ten [to] twenty.

There's no differentiation between a he- and a she-goat.

This last line possibly meant that the new judicial process did not differentiate between persons, regardless of status. There was also an attempt to understand the new order which had come to stay, through the familiar world of gods and rituals, apparently functioning in incomprehensible isolation, that marked this early period's reactions to the new institutions. Still, the village poet located power in two extreme polarities - the irresistible power in the person of the *saheb* and the army of indigenous officials under his command at one end and, at the other, the powerless prisoner.

In the post-Rammohan phase, following the lines suggested by Bhadra, this chapter argues that as the concepts of Western liberal philosophy were identified with the colonial administration, there began a rational acceptance of the colonial administration by a certain section of the society based on the rule of law. Colonial rule was seen as the repository as well as the source of this rule of law, and it was to this source that appeals and criticisms were addressed. The early newspapers noted the discrepancies between theory and practice in the professed rule of law, but felt that as the repository of that rule, the colonial administration would apply the requisite corrective. It was not that the Bengali middle classes noticed oppressive penal and legal institutions only after 1860. But it was expected that the Lieutenant-Governor would dispense the even-handed justice that had been denied by his agents. A typical example of such an expectation was apparent in a letter sent to the Samvad Bhaskar after the Santal Rebellion of 1854-55.<sup>16</sup> The plight of the Santal prisoners, who were being transferred from Damini-Koh to a prison in Beerbhoom, was noted and the writer hoped that the helplessness of the

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<sup>16</sup>Suchibrata Sen, The Santals of Jungle Mahals (An Agrarian History 1793-1861), Calcutta, 1984, pp.122-39.

prisoners and their grim fate would be brought to the notice of the Lieutenant-Governor by some of his officers when they read the Bhaskar.<sup>17</sup>

Though the notion of "honourable imprisonment" was not yet established among the bhadralok in the mid-nineteenth century, there was some difference between the punishment of thieves and robbers and those punished for fighting for a just cause. The Santals were perceived to be an independent people, who had been weakened after their military encounter with the British government: moreover, they had "not committed any theft or robbery" but had "fought to preserve their independence, and while independent, had actually beheaded many Magistrates".<sup>18</sup> Sympathy for the harsh punishment meted out to the Santals was clear from the concern shown to the Santal prisoners being taken to the Beerbhoom jail. The witness reacted to the treatment of the prisoners, but did not dwell on the nature of the legal and penal institutions which made such demonstrations of power possible. This was a connection made much later, as this chapter suggests.

Though by the 1850s, there was an inherent distinction maintained between the imprisonment of criminals and a people preferring independence, the revolt of 1857 was not interpreted after the manner of the Santal *hul*. The sepoys were seen solely by the bhadralok as a disruptive force jeopardising the established law and order structure and property by the bhadralok. Loyalty to colonial rule remained staunch, as the bhadralok's own interests were seen to be at stake along with the preservation of British power. This was the fundamental difference between the reactions of the bhadralok in the late 1850s and the early 1860s, when the indigo issue pushed the bhadralok from the onlooker's position and forced them into the unenviable place of participants. This displacement in 1861 caused the bhadralok to lose the detachment of an onlooker who could afford to sympathise with the victim as well as cheer on the powerful ruler, seen to be winning a difficult battle against disruptive forces.

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<sup>17</sup> Sambad Bhaskar, in Benoy Ghosh (ed.) Samayik Patre Banglar Samaj Chitra, Vol III, pp.298-300.

<sup>18</sup> Ibid., p.340.

### Rule and Misrule of Law

As discussed in Chapter Two, the indigo agitation brought home to the bhadralok the limitations of the rule of law in the early 1860s. This section discusses the perceived manner of the bhadralok involvement and their realisation of the shortcomings of the rule of law. The bhadralok, for the first time as a class, came under the indiscriminating legal and penal network, and did not like this. A conservative newspaper, Som Prakash narrated the experience of "a relative of ours" who had lost a piece of land to an indigo planter, yet could not get justice from the courts.<sup>19</sup> Yet another instance of such "personal experience", thereby presenting the immediacy of the danger of injustice and the colonial jail to the bhadralok was the misfortune of a subscriber to the Som-Prakash, who was unable to pay the monthly subscription.<sup>20</sup> He was sent a polite reminder, but the cause of his embarrassment was considered newsworthy: the owner of a piece of land, he was harassed by the planter as he refused to impose on his ryots the cultivation of indigo. For his decision he even had to suffer the "mortification of imprisonment". The subscriber's letter upheld "the truth of the conditions depicted in the play Neel-Darpan, thus obliterating the line between literature and reality."<sup>21</sup> Neel Darpan became a standard point of reference when reporting riots and cases concerned with indigo. A riot which took place in Nadia, involving a few villages like Ramnagar and Koomri, ended in the death of the *amin* (manager) of the factory. He had gone to measure the land for the cultivation of indigo, it was reported, "after the fashion of the *amin* in Neel Darpan", but had become involved in an argument that quickly mounted to blows. The *amin* ran away, but expired shortly afterwards.<sup>22</sup> The ryots involved in the riot were all arrested, and, it seemed likely that they would be jailed. The relatives of the participants in Ramnagar were very reluctant to disclose the actual sequence of events, as they were afraid of the

<sup>19</sup> Som Prakash, 21 Bhadra, No.43, 1266 B.S., 1859, in Samayik Patre Banglar Samajchitra, pp.56-57.

<sup>20</sup> The editor of Som Prakash was the liberal Dwarakanath Vidyabhushan, cited by Tapan Raychaudhuri, Europe Reconsidered: Perceptions of the West in Nineteenth Century Bengal, Delhi, 1988, p.21.

<sup>21</sup> Som Prakash, 24 Bhadra, 1269 B.S., (1862), Samayik Patre Banglar Samajchitra, pp.68-69.

<sup>22</sup> Ibid., 9 Chaitra, No.19, 1270 B.S., (1863), p.76.



members of their family being transported for murder.<sup>23</sup> The constant outpouring of complaints in the criminal courts indicate that by this date even ryots had become familiar with the language of the courts.<sup>24</sup>

The notion of the *bhadra* planter, like Debendranath Tagore of Jorasanko, who, convinced that indigo could not be planted without oppression, had shut down his factory, became current as well.<sup>25</sup> Thus the *bhadrasantan*, as the collaborator who not only made no profit himself, but only aided the planter to make money, lost his "bhadra status, self-respect, independence," and became someone "who carried on his livelihood by torturing his own countrymen".<sup>26</sup> This phase, then, when the *bhadralok* became involved in a process of extortion that had been the source of agrarian tension since the early nineteenth century,<sup>27</sup> saw the formulation of tenets that became the basis for the imperceptible beginning of the notion of the "honourable prisoner" who was prepared to suffer, or was made to suffer, for a just cause. The much-publicised jail sentence of the Reverend Long was of this genre.

The *chhotolok*, suffering the unbearable hardships of the court and the jail, were perceived to be on the verge of rebellion. They were, however, seen as a conglomerate entity, with few typical hardships of the kind represented by *Neel-Darpan*. For instance a letter printed in *Som Prakash*, purporting to be "an identical replication", yet bearing the stamp of formalised Bengali prose, was said to be from a ryot complaining of the condition of his village, where the *majestor* (magistrate), with close planter ties, could only repeat "*dey phataka dey phataka*" (lock them up). All the men were taken from the village and jailed, it was reported, thus replicating the situation in the play. The richest of the ryots did not escape imprisonment, and "one or two had even died in jail".<sup>28</sup> The women, too, were being harassed by the *lathials* of the planter.

<sup>23</sup> *Ibid.*, 21 Baisakh, No.25, 1271 B.S., (1864), pp.82-83.

<sup>24</sup> *Ibid.*, p. 83.

<sup>25</sup> *Ibid.*, 14 Baisakh, 1271, No.24, p.80.

<sup>26</sup> *Ibid.*, 18 Baisakh, 1290, (1883), p.158.

<sup>27</sup> Amiya Rao and B.G.Rao, *The Blue Devil: Indigo and Colonial Bengal*, Delhi, 1992, pp.18-51.

<sup>28</sup> *Som Prakash*, 16 Chaitra, 1270 B.S., (1863), No. 20, *Samayik Patre Banglar Samajchitra*, pp.77-78.

The Dramatic Performances Act in 1876, and two other acts, the Arms Act and the Press Act of 1878, furthered political developments, especially the Press Act, which directly affected the urban middle class, and thus came under the scrutiny of the bhadralok. These were perceived to be closely linked to injustice, as any contravention of these acts was liable to send the dissenter to the prison. The criticism following the trial and deposition of the Gaekwad of Baroda in the newspapers in 1875 had alerted the government to the press; it was judged politic by Lord Salisbury, the Secretary of the State for India, to put the rebellious editor of the Amrita Bazar Patrika under lock and key. This, together with the recommendation of Ashley Eden, the Lieutenant-Governor of Bengal, was considered a precedent in 1878 by Lord Lytton, the Viceroy, to pass the Act IX.<sup>29</sup>

The Press Act was considered to be against the "rule of law". It was felt by the bhadralok that education had rendered them capable of judgement, and they were not "ignorant and uncivilised like the people of the northern part of the country". The assassinations of Justice Norman and Lord Mayo were recalled in 1881, and the assassins were portrayed as typical representatives of northern India, capable of murder because of their lack of education and non-development of their critical faculty, unlike the Bengali, who could analyse trends sensibly and critically assess the performance of the government. They had no need to turn criminal because of a feeling of dissatisfaction with the government, as had Ameer Khan and Sher Ali: "We ask you, should the Bengali be as ignorant and therefore be like Sher Ali and Ameer Khan?"<sup>30</sup>

There was a strand of criticism that would prefer to preserve the "rule of law" in all its liberal rationale, and the panegyric on the freedom of speech and expression that had been granted by the British Government in 1878 by the Som Prakash was repeated in many newspapers.<sup>31</sup> The expected prohibition by the government was the subject of a deputation to the Delhi Durbar in 1877 where "a pointed reference" was made to the

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<sup>29</sup> Ibid., 21 Sravana, 1285 B.S., 1878, No.36, pp.385-386.

<sup>30</sup> Ibid., 1 Chaitra, 1288 B.S., 1881, pp.409-410.

<sup>31</sup> Ibid.

"coming restrictions on the Press".<sup>32</sup> Also, the Arms Act, that was thought unnecessary in 1857 by Lord Canning, the then Governor General, even under the threat of the Rebellion, was felt to be unjust in 1878.<sup>33</sup>

There was yet another strand of criticism unravelling itself from within the bhadralok discourse, questioning the very basis of colonial rule, that is, the utility and applicability of the legal and penal institutions introduced by colonial rule. The bewilderment of the pre-Rammohan period's intellectuals with the different legal and penal institutions of the new regime had been dispersed. This had been replaced with scepticism as to the function of courts and jails that had nothing in common with the indigenous institutions. Thus, theoretically "the colonies including Bharatbarsha" under the "strange hierarchical administrative network ... with checks and balances" precluded "any hint of misrule in theory" by the colonial administration. In practice, "it seems the very personification of misrule", and "not even the Muslim rule [was] responsible for such maladministration".<sup>34</sup>

On the political side, the bhadralok approved of the Village Chowkidari Act (VI) in 1870, which was responsible for the selection of the village *chowkidars* by the District Magistrates. This, along with the Bengal Municipal Act of 1884, convinced the bhadralok that indigenous legal institutions were being revived by the government. This impression was later reinforced, for Act I of 1886 ensured the further changes to Section 3 of Act VI, as by this the Magistrate of a district had to establish by enquiry the fittest people for the *panchayat*.<sup>35</sup> These reforms in the 1880s were met with enthusiasm from the bhadralok.<sup>36</sup> The reintroduction and reform of these institutions in the 1880s made the middle classes realise the disassociation of the Bengali society from these local roots, and the subsequent loss of legal heritage, for the educated Bengali had "not witnessed the

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<sup>32</sup> Surendranath Banerjee, A Nation in Making: Being the Reminiscences of Fifty Years of Public Life, London, 1927, p.59.

<sup>33</sup> Ibid., pp. 57-58.

<sup>34</sup> Som Prakash, 5 Ashwin, 1287 B.S., 1880, in Samayik Patre Banglar Samajchitra, p. 396.

<sup>35</sup> Bengal Legislative Council Debates, 1892, pp.44-46, Teen Murti.

<sup>36</sup> Som Prakash, 20 Bhadra, 1289, 1881, No. 42, Banglar Samajchitra, p.411, also 3 Ashwin, 1289, no.44, ibid., p.415.

working of the *panchayats*". Now, it was felt that they were "more suitable for our conditions ... than the alien courts which had usurped the position of the panchayets" for they spelt financial ruin for the people, and "justice [was] secured with great difficulty, and even then the quality of justice dispensed [was] doubtful".<sup>37</sup>

The Ilbert Bill of 1883 was used as a device to re-examine the role of the courts and the jails already under attack as the judgements given in cases like those of the Gaekwad of Baroda and Har Sahai were questioned. The bhadralok realised that even as an indigenous elite their position was in fact as subaltern as that of any unprotected "coolie". The position of the elite was considered to be especially under threat, as such a Bill was perceived directly to target their class: "Why would the high-caste Bengali be denied such posts?"<sup>38</sup> This was the greatest injustice, and this attitude of the colonial government towards the indigenous elite was seen to be a direct consequence of racial hatred, and Surendranath Banerjee's imprisonment was seen to be a further offshoot of this bias of the administration.<sup>39</sup>

### Three Trends in the Bhadrlok Discourse

There were, therefore, three emerging trends in bhadralok attitudes towards criminal trials and the consequent jail sentences in the 1880s. The Reverend Long's imprisonment was treated as a symbol of suffering and became an integral part of the political consciousness. But the resurrection of these initial trials, wearing the new garb of national aspirations in the 1880s, utilised only a certain type of trial. Thus the jail sentences passed on powerful zamindars like Joykrishna Mukherjee were never invoked to demonstrate the "injustice" of the criminal courts. This politicisation of the public trials of the leading figures of indigenous society by the bhadralok was an important change of the 1870s. The courts were beginning to be seen in the light of confrontation between the ruling and the subject race, of an alien ruling power bent upon the complete trampling of

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<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, 22 Phalgun, 1289 B.S., (1882), No. 16, p. 420.

<sup>39</sup> *Ibid.*, 8 Jyashtha, 1290 B.S., (1883), p. 431.

the pride of the indigenous elite in visible sites of oppression.. The arena of the courts and "illegal" trials became vital to feed this sense of ill-usage at the hands of the colonial administration. All through the late 1870s, 1880s and 1890s, a fully developed critique of the colonial legal and penal system emerged, feeding on political developments like the trial and imprisonment of the Gaekwad of Baroda, the Vernacular Press Act of 1878, or the Arms Act of 1878, and the subsequent trials of the newspaper editors.

However, diametrically opposed to this misrule of law, the rule of law was still presented as unsullied when the legal and penal web caught in its meshes a criminal, perceived by the bhadralok to be truly so. Government intervention was sought to prevent any miscarriage of justice at this level, and acquittals of such criminals were seen as failures of justice. This terrain of criminality was occupied, according to the bhadralok, solely by the chhotolok. In so doing, the lower sections of society began to figure in the bhadralok discourse on the courts and jails, as inevitably the lower sections of the indigenous population formed the bulk of the prisoners standing their trial in the courts, or imprisoned in the jails.

However, this class of the society either formed configurations of "victims" of the legal procedure, and therefore served as a generic symbol of the oppressed by being jailed needlessly,<sup>40</sup> or they formed a part of the underworld, a class far removed from the bhadralok in terms of culture and education, the natural inhabitants of the jails, a class for whom the creation of jails were seen to be essential. That the government should maintain its role as the protector of lives and property, and of law and order was acknowledged, and from this angle the criminal courts and the prisons had their utility.

This distinction between the bhadralok and the chhotolok was initially perceived by the government as well, even though the law did not officially recognise the distinction. Thus in 1867, the government felt concern when a sentence of whipping was passed and carried out on a "person of respectability ... for a petty theft and on insufficient evidence, after a somewhat hurried trial ..." by the Magistrate of Jessore, Mr.

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<sup>40</sup>See Chapter 2, p.14.

Munroe.<sup>41</sup> The "respectability" of the young man sentenced to "corporal punishment of thirty stripes" for the supposed theft of an umbrella was commented on by the Hindoo Patriot, an opinion noted by the Government of India, in itself a significant fact.<sup>42</sup> Rojoni Kanta Nandi's identity as a Kaisth, and the *naib* (manager) of a zamindar, who had complained on his behalf, made the punishment assume "serious" proportions. The government was worried about the fall-out of "the very serious allegation that a person of unblemished character has been, upon very dubious evidence, subjected to the almost indelible disgrace of being publicly flogged for larceny".<sup>43</sup> In a case such as this, the government preferred to maintain differential treatment between the *bhadralok* and the *chhotolok*. This could be seen from the discussion of the unlikelihood of Rojoni Kanta being guilty, when far more likely thieves were at the spot. As pointed out by one official, "the strong antecedent improbability of a person in the prisoner's class of life, his age and position, stealing a bulky article of trifling value" was considerable. The unlikelihood increased when one considered "the fact that in proximity, almost if not quite equal, was found another person, who described himself as a Muhamedan and a cultivator, aged 35 years, whose demeanour was, to say the least of it, calculated to excite suspicion ...". The government, then, was biased against more "likely" candidates, from a poor economic background, and disapproved of suspicion falling first and foremost on the "native of a class known as 'Bhodro' in the case of a petty theft", and a "cruel" sentence being inflicted on a *bhadralok* because of it. Such treatment should have been reserved "for the lowest and most hardened criminal, whom it may not be thought useful to imprison". There was again an implied undertone of the *chhotolok* being used to punishment, to whom the passing of an "undeserved sentence" would present no particular disgrace, but that it was otherwise with the *bhadralok*. Echoing the *bhadralok* sentiments, the official voice declared - "it is needless to enlarge upon the physical torture and the disgrace upon a young man, not of the labouring classes, but respectably

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<sup>41</sup>E.C. Bayley, Sec. to GOI, to GOB, Home, Judicial, 10 May, 1867, 135-140, NAI.

<sup>42</sup>L. Dampier, Sec. to GOI, to GOB, 22 July, 1867, ibid, NAI.

<sup>43</sup>R.B. Chapman, Commissioner of Presidency Division, to Sec. to GOI, 20 May, 1867, ibid., NAI.

employed and connected, by such a punishment".<sup>44</sup> This distinction was absorbed by the bhadralok and thus their outrage became all the greater when their general immunity from the legal and penal network disappeared.

The trials of Abdoollah, and Sher (Ali) Khan, guilty of assassinating Justice Norman and Lord Mayo in the early 1870s, fell within the ambit of justifiable state action. These trials brought forth the bhadralok speculation on criminality, and the impartiality of colonial justice. Such deliberation on the legal system amongst the educated classes, which took an objective stance regarding the assassinations, and the criminals in question, since both the assassins were not from Bengal - "the wretched assassins were not the natural-born subjects of Her Majesty, they came from the frontier; then they belonged to a race, which delighted in bloodshed and murder".<sup>45</sup> Norman's assassination provoked a defence of the courts of law, where the "basest criminal" was given a fair trial, and "where an observance of all the forms of procedure to give a fair and impartial trial even to such ruffians shews the character of British rule to the best advantage".<sup>46</sup> The second assassination, this time of Lord Mayo, in 1872, led to further speculation on the nature of justice. The English law's "justness" and "fairness" was emphasised, and the decision of the courts on flimsy evidence in Sher Khan's first conviction to transportation for life was felt to go against the vaunted principles of law - "Indeed in his case the British Judges seemed to have forgotten the grand English maxim that it was better that ten guilty men should escape than one innocent man should suffer". The probability of Sher Ali's innocence in his first conviction, and his consequent resentment was pointed out as the motive for his "crime", but the right of the colonial administration state to punish Sher Ali was not in question.<sup>47</sup>

But at the same time the definition by the government of what constituted "crime", "criminals", "disturbance of peace", and "maintenance of law and order", began

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<sup>44</sup> C.D. Field, Registrar of High Court, in Bengal, to H.L. Dampier, Offg. Sec. to GOB, 1867, Home, Judicial, Nos. 135-140, NAI.

<sup>45</sup> Hindoo Patriot, 26 Feb. 1872, p. 101.

<sup>46</sup> Hindoo Patriot, 2 Oct. 1871.

<sup>47</sup> Hindoo Patriot, 26 Feb. 1872.

to differ when it concerned the middle classes themselves. With each public trial, with each prison sentence, the bhadralok defined its position against the colonial government, stating what set them apart from the general jail population, asserting their position as bhadralok, distinct from the chhotolok in terms of behaviour, language and status.

Beyond this contested space between the bhadralok and the government, there was a <sup>1</sup>area which the bhadralok protected from the penetration of the colonial legal and penal systems, and which formed the third trend. This was the zone of the *andarmahal* or the *zenana*. Trials and sentences in this difficult sphere could earn the government odium as well as praise. A double-barelled trial, involving two individuals, one a seducer and the second a wife-murderer, raised many questions regarding justice in the social realm. It also demonstrated a retreat in society, where conventional mores and social values were emphasised and cultural continuity was stressed along traditional lines. This social crime was the seduction of Nobin Bandopadhyay's wife, Alokeshi, by the Mohanto of Tarakeshwar. Alokeshi was consequently murdered by Nobin, her husband, as he did not intend sharing her with the Mohanto. The trial in 1873 resulted in a three-year prison sentence with labour pronounced on the Mohanto. The sentence pronouncing jail labour on the Mohanto aroused savage glee as he was the seducer of Nobin's wife, who was a Brahmin as well, thus compounding the Mohanto's offence. The second one, of Nobin, on the other hand, even though his wife's murderer, received popular support and sympathy, as he was supposed to have redeemed Bengali manhood, and his trial and the subsequent sentence of transportation for life were considered unfair. The crime became the subject of intense public discussion, and a number of plays were written about it, reflecting the bhadralok's attitudes on the issue of feminine chastity, and what did or did not constitute a crime. The crime was even depicted on the Kalighat *pats* (paintings), thus revealing a shared value system of the chhotolok and the bhadralok where such sexual offences were concerned.<sup>48</sup> How far this case had gripped the imagination of the Bengali bhadralok can be seen in 1876, when the *Hindoo Patriot* wrote its own epilogue to the

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<sup>48</sup>Sumanta Banerjee, *The Parlour and the Streets: Elite and Popular Culture in Nineteenth Century Calcutta*, Calcutta, 1989, p. 132.



Mohanto-Alokeshi case:

The whole Hindu community had in one voice moved Sir George Campbell for the remission of the sentence on poor Nobin, the victim of the Mohunt of Taraksehwar, but without effect. A petition ... was lately made to Sir Richard temple who had passed the order for the release of Nobin. *Durga* [goddess] bless Sir Richard Temple!<sup>49</sup>

The transformation of Nobin into the "victim" of the Mohanto of Tarakeshwar, and the complete obliteration of Alokeshi from the status of "victim" three years later show a clear hardening of attitudes regarding the "unchaste woman", and a consistent refusal to treat Nobin and individuals like him as criminal. This attitude reflected prevalent social and moral codes of behaviour, and were boldly given public utterance. The assimilation of foreign laws by the bhadralok, at the same time adapting them to their own social mores, became evident. The echoes of the Mohanto-Nobin trial could be heard throughout the 1880s and 1890s, down to the 1910s and beyond. The bhadralok co-opted the whole of the society (*samaj*) within its moral folds, and loudly proclaimed what it required the law to do in cases like this.

The Native Newspaper Reports, taking cognisance of a wide gamut of vernacular newspapers from all parts of Bengal, recorded what the bhadralok considered topical. Adultery and its punishment remained a burning question. The Indian Penal Code was thought not to take into account the mores of indigenous society, and any crime carrying the taint of moral looseness had the bhadralok up in arms. The demand to have section 497 of the IPC amended and the woman be made to share the punishment for her crime was representative of such an attitude.<sup>50</sup>

Thus the discussion around a social crime in the 1870s established the norm for the bhadralok, and they loudly claimed the leniency of the law in such cases. Whenever there was a light sentence given to a man who had murdered his wife, the press acclaimed it on the behalf of the whole native society. The Judge delivering the sentence

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<sup>49</sup> Hindoo Patriot, 25 Sep. 1876, p. 60.

<sup>50</sup> Hindu Ranjika, 15 Aug. 1883, No.35, BNNR, 1883, p.525.

also had the bhadralok's approbation. Thus the Sadharani upheld the views of Judge Barry, who, while handing out a light sentence of imprisonment to a man for murdering his wife, declared, "Our sympathies are altogether with the accused. It cannot be doubted that if more husbands were as high-spirited as the accused, adultery would be less common in the country, where among a certain class of natives it is painfully common."<sup>51</sup> The Allahabad High Court Judge, Straight, criticised Barry's views and felt that such subversive "views ... should not have been expressed", but the Bengali press was highly appreciative of such empathy with the bhadralok mentality.

Had all English Judges taken into consideration like Mr. Barry the circumstances under which crimes are committed, the severity of the Penal Code would have been considerably diminished, and the want of spirit among the people would have been in a considerable measure removed.<sup>52</sup>

The Ananda Bazar Patrika also commented on Straight's criticism of Barry as showing a complete lack of understanding of the Indian people, who "like Mr. Barry, naturally enough look upon the man who can punish his unchaste woman or a wrong-doer as a hero".<sup>53</sup> The Mohanto-Nobin trial thus brought into the open an essential feature of the Bengali psyche regarding certain forms of social violence which were not felt to be a crime. By the 1880s, the articulation of certain attitudes had taken place, which were reflected in the literature of the period, in newspapers, and in attempts to actively intervene in trials for the minimum of sentences, and even to attempt to procure pardons for condemned prisoners. Dacca Prakash expressed the bhadralok's concept of what constituted criminality to be curbed and punished and what should not be considered criminal: "the punishments should not be very severe with cases of sudden impulses the consequence of assault, adultery, robbery, etc. but such offences as perjury, theft, forgery and cheating should be severely dealt with".<sup>54</sup> There were cases which always

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<sup>51</sup> Sadharani, 30 Aug. 1885, No. 36, BNNR, 1885, p. 1132.

<sup>52</sup> Ibid.

<sup>53</sup> Ananda Bazar Patrika, 31 Aug. 1885, No. 36, BNNR, 1885, p. 1140.

<sup>54</sup> Dacca Prakash, 19 Jun. 1887, No. 26, BNNR, 1887, p. 647.

kept this side of the courts and the jails in the public eye.

In 1885 the papers hummed with the trial of Tincouri Pal, who had murdered a prostitute, Kusum, and had been sentenced to capital punishment. The shades of the Nobin-Mohanto trial, and the sentence of transportation on Nobin were recalled, and a similar punishment for Tincouri Pal demanded from the government. The vernacular paper, Bharat Basi put forward, along with other newspapers, the reasons why Tincouri Pal should not be put to death.

the unfortunate young man is very young. He has got a wife. The wife was advanced in her pregnancy when the murder took place. She has since given birth to a child. The father of Tincari is a very respectable citizen. He is an old man. The sufferings of this man will be intolerable.

He has not come out of his house since his son was taken into custody.<sup>55</sup>

The Sadharani,<sup>56</sup> and several other Bengali papers like the Nava Vibhakar<sup>57</sup>, Som Prakash<sup>58</sup> and Surabhi,<sup>59</sup> echoed the same sentiments and reported the concern of the "respectable gentlemen of Calcutta" over this case, which led them to submit a petition of mercy, with 20,000 signatures. But to no avail, as Tincouri Pal was hanged in the Presidency Jail, much to the disappointment of the bhadralok community.<sup>60</sup> Justice was called into question, and the different British and Bengali values were compared. Thus, even after Pal's execution, the debate about the advisability of remorseless justice continued. The newspapers dwelt upon the grief of the father, and the helplessness of the wife and child. Tincouri's bravery on the scaffold as a reformed character (thus demonstrating the inutility of the capital sentence), and his exhortation to the Bengalis to avoid the path of vice which he had traversed, were also discussed. Burdwan Sanjivani expressed a defiant attitude towards the definition of the colonial government on the

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<sup>55</sup> Bharat Basi, 1 Aug. 1885, No. 32, BNNR, 1885, p. 1010.

<sup>56</sup> Sadharani, 2 Aug. 1885, BNNR., 1885, p.1012.

<sup>57</sup> Nava Vibhakar, 3 Aug. 1885, BNNR, 1885, p.1012.

<sup>58</sup> Som Prakash, 3 Aug. 1885, No. 32, BNNR, 1885, p. 1015.

<sup>59</sup> Surabhi, 4 Aug. 1885, No. 32, BNNR, 1885, p.1020.

<sup>60</sup> Bangabasi, 15 Aug. 1885, No.34, BNNR, 1885, p.1066.

"criminal", an indication that the bhadralok was closing ranks against the legality of such sentences:

criminals are punished for the good of society, but if the society wants to have any particular criminals in its midst, why should a ruler reject its application? 20,000 men asked for the life of Tincouri Pal. It was not necessary for the ruler to consider whether the petition of the subjects was reasonable or not.<sup>61</sup>

The murder of a prostitute was not considered reason enough to claim the life of a member of the bhadralok. The grim equation of the colonial legal system - murder if proved, could be punished by hanging or for transportation - was seen as "*laghu pape guru danda*" or "heavy punishment for a light crime", when a member of the bhadralok was called to account for a prostitute's death.

How far the government was right in handing out such a sentence, to remain so rigidly impartial, was also questioned. Thus there was further exploration on the reason for Tincouri Pal's intemperance - the abkari policies of the government which had weakened the "social and religious discipline in native society", and so led to his crime. A clear line difference in behaviour was drawn between the bhadralok and the chhotolok by the Ananda Bazar Patrika, a difference which the colonial government had weakened over the "last 30 or 35 years" with its policy of "cheap liquor". Before expensive foreign liquor had made inroads into the morals of the bhadralok, the distinction could be maintained sharply: "the members of a few religious sects and only a few persons belonging to the respectable classes used liquor. Liquor ... was used by the lower classes, but respectable people looked upon it as an abomination".<sup>62</sup>

However, there was a growing awareness that such distinctions were becoming blurred, and because of such depraved habits the bhadralok were also becoming gradually criminalised. This understanding of bhadralok's criminality was fully reflected in the plays of Girish Basu in the 1880s, where Tincouri Pal came to life in the play

<sup>61</sup> Burdwan Sanjivani, 15 Aug. 1885, No. 35, BNNR, 1885, p. 1094.

<sup>62</sup> Ananda Bazar Patrika, 24 Aug. 1885, No. 35, BNNR., 1885, p.1111.

"Prafulla", in the context of "bhadrlok criminality", discussed in Chapter Five. The preoccupation with the criminalisation of the bhadrlok by the law, being publicly sentenced, and being publicly reduced to the status of the chhotolok was visible in the newspapers. Thus one finds in the 1880s a fairly accurate reflection of the rapid change of morals and life style of the bhadrlok which was merging its identity with the chhotolok in the literature of the period .

There was also an attempt to verbalise the inchoate anger of the lowest classes as a part of the Hindu male's hatred of his unchaste wife. The bhadrlok had found a point of empathy with the chhotolok, as the response to the murder by Gobind Bagdie, an untouchable, of his unchaste wife brought forth a wave of sympathy in the Bangabasi for the victim of the alien legal system, with its foreign judges. It was contended that

English judges had no idea of the sort of mental excitement which drives a Hindu to kill his faithless wife. One Gobind Bagdie was recently tried at Alipore Criminal sessions for committing a triple murder ... Unchastity in the wife is unbearable even to the people of the lowest classes in the country; in fact it drives even them to madness ... In the present case, however, the presiding Judge, Mr. Beveridge, could not take the offence of Gobind in the same light in which it was taken by the Hindu jurors ... What Englishmen regard as justice in such cases, the people of India regard as injustice.<sup>63</sup>

Occasionally, some of these cases would start with a flash-point - a domestic crisis which precipitated violence against the woman, generally ending in her death. By the 1880s, it was generally known that the murder of a woman could be explained by the provocation offered by the woman by her "unchastity". A step-by-step uncovering of the final camouflaging of murder by turning the victim into an "unfaithful wife", not worthy of concern, can be observed in the reaction to the trial and the subsequent capital sentence passed on a man, Nandalal Kundu. The case began as domestic violence against a wife, resulting in her death, her mother and daughter being injured, and in a capital sentence

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<sup>63</sup> Bangabasi, 3 Dec. 1887, No. 50, BNNR. 1887, p. 1214.

for the husband. It underwent a transformation in petition after petition from the bhadralok, and the victim assumed the garb of the "unchaste woman", the violator turned into the "victim", and a confession of his wife's "unchastity" in the jail turned his capital sentence into one of transportation for life. Opportunities were offered at every turn of the legal proceedings to the prisoner to declare his unstable frame of mind at his wife's unchastity, and thus escape a capital punishment. The Magistrate of Pabna, Kumar Gopendra Krishna, a bhadralok government servant visited Nandalal Kundu in the jail, and informed him of the rejection of his appeal. Nandalal Kundu "thereupon began to weep". The Magistrate then inquired about the motive of the crime, and Nandalal gave as his excuse the "faithlessness" of his wife. Execution was stayed for a week, and "full enquiries" were made, and the prisoner disclosed that though he could not provide proof, he had killed his wife only upon intense provocation. He had taken "her to task" over "a man coming out of her room, and her past intrigues with other people". But his wife, unrepentant and abusive, had said that "she would do the same thing whenever she could and did not care for him at all and that he could do what he liked". He had killed her then, though without intending to physically hurt his mother-in-law and his daughter, but "he had not mentioned all this before through fear of loss of caste, and becoming an object of contempt to the public generally".<sup>64</sup> The pattern of such trials was faithfully followed, and a big petition, with some 400 signatures was sent to the government, requesting clemency. The government changed the capital sentence to one of transportation for life.

These three strands were entwined and the multiplicity of responses that made up the bhadralok reactions to the legal and penal institutions of the colonial administration were shaped by these basic trends.

### **Contesting the Rule of Law**

The political and social trials set the educated middle class on the road to confrontation with the British: trapped within the parameters of the "rule of law", the bhadralok from

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<sup>64</sup> Kumar Gopendra Krishna, Officiating Magistrate of Pubna, to Chief Secretary to GOB, Pabna, 8-11, 5 Dec. 1890, Judicial, BJP, 1890, WBSA.

this point started to criticise the operation of the rule of law through the legal and penal institutions. Thus how impartial the rule of law was, and how deeply the British government was committed to it - these were beginning to be questioned in public.

George Campbell, the Lieutenant-Governor of Bengal, had expressed doubt as to the desirability of the supremacy of the judiciary, especially of the High Court, over the executive.<sup>65</sup> Inveighing against the implied negation of the principle of an independent judiciary, working separately from the executive, the Hindoo Patriot took up the charge of treason against one Ameer Khan, whose request to be tried by the High Court had been refused by the government. What was seriously analysed was not the case of Ameer Khan, but the trajectory of development of the legal institution in the Bengal Presidency. The policy of previous Lieutenant-Governors like John Peter Grant, Cecil Beadon, and William Grey had ensured a measure of judicial independence, a fact observed by the Hindoo Patriot. These Lieutenant-Governors had thought that the Bengal government had "passed the patriarchal epoch, and had sufficiently advanced to be brought within the pale of civilised institutions". Thus by the 1870s there was a growing conviction within the bhadralok, derived from the official attitude of an "advanced Bengal", that "educated Bengal has reached a different stage of civilisation from that in which the Punjab or the Central Provinces are". This conviction bred a complacent sense of superiority vis-a-vis other provinces which had not the advantages of Bengal: the bhadralok prided itself on the development of Bengal. Therefore, it was felt that any attempt to "lift the authority of the executive above the supremacy of law" would be bitterly resented by the educated classes of Bengal.<sup>66</sup>

This complacency encompassed other areas of administration as well. For instance, the Hindoo Patriot stated that the prisons in British Burma suffered in comparison to the jails in Bengal or in any branch of "local administration", for Bengal was "one of the oldest British possessions at different levels of intellectual advancement, ... under a highly cultivated official agency", while the latter was "a new province, ...

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<sup>65</sup> Hindoo Patriot, 18 Mar. 1872, p.136.

<sup>66</sup> Ibid.

little advanced in education ... and under an official agency, necessarily much inferior".<sup>67</sup>

The early 1870s, then, reflecting an ambiguous mixture of complacency regarding the efficacy and the advanced stage of the courts and jails, but also criticism of the functioning of the institutions, made it clear that their operation were no longer the sole prerogative of the government. Henceforth the *bhadralok* critically assessed the principles enshrined in the law. It was perceived that though "fair" theoretically, these principles were actually detrimental, as the clearly guilty could escape on a mere "technicality of the law", and doubtful cases were held up as samples of the miscarriage of justice. An instance of such informed criticism of the law (especially the ritual of the cross-examination of witnesses, and the establishment of the degree of guilt by the courts) and the subsequent punishment of the culprits could be observed in a murder case.

A young girl had been murdered for her ornaments, and the guilt of the murderers, a low-caste couple (*Kamars* or blacksmiths), was clearly indicated, as the body was found hidden in their house, and an eye-witness, a woman, had actually seen them burying the body. The witness, however, contradicted herself in the cross-examination, and the criminals were acquitted of murder, and instead was sentenced to two years' rigorous imprisonment for hiding "incriminating evidence" by the High Court. This decision "filled the native community with grief".

If this witness prevaricated, and contradicted herself, it should be borne in mind that a native woman in her position could hardly be expected to retain her presence of mind, even if she did mean to tell the truth ... consider the effect of this trial upon the minds of the poor parents whose girl was murdered. They have lost their daughter, and they have not the satisfaction of seeing the author of this diabolical crime brought to justice ... their feeling is shared by the whole native community.<sup>68</sup>

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<sup>67</sup> *Hindoo Patriot*, 11 Nov. 1872.

<sup>68</sup> *Hindoo Patriot*, 10 Aug. 1874.



Thus critical, knowledgeable examination of the legal and penal institutions, approving or disapproving, was building layer upon layer of awareness of the Bengali intelligentsia as the assessor of judicial "justice" or "injustice" which they perceived in legal and penal institutions. It was gradually being realised that the evidence weighed up in court, and the cross-examinations of the witnesses there, were not conducive to justice, not because the simple, uneducated peasant lied deliberately, but on the contrary, because of confused ideas about dates, time, place, distance, the colonial legal institutions were incapable of assessing the truthfulness or criminality of a prisoner in the court. The bhadralok declared "the incompetency" of some of the "judicial officers in the Mofussil, [and their failure] to appreciate native testimony and to grapple with difficult questions of fact which they are supposed to try".<sup>69</sup> There was an increasing disenchantment with the average officer in the mofussil. It was felt that such "visible embodiment[s] of the Majesty of England before the masses" were a "gross mockery of its professions and promises".<sup>70</sup>

Yet, trapped within the rationality of the rule of law, the criticism of the legal and penal institutions was circumscribed by a tacit acceptance of them. Thus, though the sentence of transportation for life was passed after a public trial, on a figure of great importance, the Raja of Khurda, believed to be the living incarnation of Jagannath, the presiding deity of the Puri temple, the bhadralok accepted the sentence of transportation for life as just. Burdwan Sanjivani observed that the complicity of the Raja of Khurda in the murder of a fakir was proven in the highest court in the land, thus rendering the Raja completely open to the functioning of the law:

although the Rajah is a member of a royal and noble family, he himself holding a respectable and influential position, yet all this cannot avail him; since everyone, irrespective of rank, caste or creed is equal in the eyes of the law ... we think that the judge has

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<sup>69</sup> Hindoo Patriot, 22 Mar. 1875.

<sup>70</sup> Hindoo Patriot, 29 May, 1876.

been rather merciful to him.<sup>71</sup>

This judicious statement revealed how far the reification of the liberal notion of equality of all in the eyes of the law, regardless of social position and wealth, at least in theory, had taken place within the middle class. Even sympathy for the Raja's social position could not transcend the conviction that justice had taken its course, and there could be no reversal of the decision of the High Court:

in common with the general public, we are sorely distressed at the severe punishment passed on the honoured and respectable man as the Rajah of Puri, yet it has to be accepted as just, since the Rajah was defended by two of the ablest barristers and tried and convicted by the highest tribunal of the land.<sup>72</sup>

This self-critical appraisal, while acknowledging the need to submit to the decree of the colonial courts, was also turned against the government. Initially there was appreciation of the "open" manner of justice, and the publicly delivered sentences, but later as the sense of being distanced or alienated from the source of power grew through the visible barometer of legal "injustice", the bhadralok became critical of the rule of law in the 1870s. It is against this backdrop that the next chapter must be placed, and the bhadralok's preoccupation in literature with the courts and "unjust" sentences.

This dissatisfaction with the law courts was reflected in the discussion on the Evidence Bill which also became a commentary on the legal system: the system was criticised by James Stephen as "a half and half system, in which a vast body of half-understood law, destitute of arrangement and of uncertain authority, maintains a dead-alive existence ..."<sup>73</sup> This statement was taken up by the Hindoo Patriot, and expounded on, beginning with, "Every word of this statement is true, but we cannot help observing that Mr. Stephens [sic] has stated only half the truth".<sup>74</sup>

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<sup>71</sup> Burdwan Sanjivani, 22 Apr. 1878, No. 18, BNNR, 1878, p.8.

<sup>72</sup> Samvad Prabhakar, 17 May, 1878, No. 20, BNNR 1878, p. 9.

<sup>73</sup> James Fitz - James Stephen, "The Law of Homicide in England and India", in Calcutta Review, Vol.CXXXII, 1878, 248-63.

<sup>74</sup> Hindoo Patriot, 25 Sep. 1871.

There was a corrosive sense of disillusionment regarding the legal system within the educated middle classes, especially regarding British bias towards Europeans. That two sets of judicial values were operative was perceived clearly, and the newspapers were full of satirical insights into the relationship between the ruler and the ruled. The previous trust in the "justice" of British rule was being replaced by a gradual awareness of the one-sidedness of British justice.

This trust had been built up by the courteous treatment accorded to the Bengali elite in court. That such marks of courtesy existed in the 1850s and 1860s had been noted by John Beames. One such, in the early 1860s, was the trial of an old zamindar, Raja Lilanand Singh, framed by his agent, Isri Prasad, for embezzlement. The Raja had to be present in court as a prisoner, and the Judge, "a quiet, experienced old hand", gave the Raja a seat on the Bench. Isri Prasad's counsel, Mr. Coryton, "a man new to India", objected to this but the Judge silenced him: "it is for me to decide where the prisoner shall sit".<sup>75</sup> This mutual respect showed signs of breaking down during the indigo revolt agitation, as more and more bhadralok did not get any "respect" in court as they faced criminal charges and were imprisoned.

A decade later, the public trials of the Raja of Kurda and the assassins of Justice Norman and Lord Mayo raised many questions regarding "justice", based on these collective experiences, revealing a society which was in ferment. The social crimes revealed a retreat in society, where conventional mores and social values were emphasised, and cultural continuity was stressed along traditional lines. The political crimes in the early years of the 1870s made the bhadralok reaffirm, albeit with a cautious qualification, their loyalty towards the government. But most importantly, during this period, the capability of the ruling power for administering impartial justice to the bhadralok as a class was questioned. As the seed of doubt flourished, the chhotolok took a major part as living samples to British injustice. There thus gradually began to be a common cause with the chhotolok, who were the most vulnerable section, and whose manifold grievances began to be taken up by the middle class when they realised that

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<sup>75</sup> John Beames, *Memoirs of a Bengal Civilian*, London, 1961, pp. 157-58.

what affected the chotolok affected them too. But while the bhadralok espoused the chotolok's cause when it could be clubbed together with their demands, it was their own rights they jealously tried to protect.

### **The Official Attitude**

The government bias towards the Europeans, the subject of bhadralok criticism in the 1860s, existed as a policy long before that. Where the judicial balance was between fairly influential "natives", and the upholding of the impartiality of the "rule of law", the administration was analytical. It weighed the possibilities of inaction and thus incurring the doubt of the people, or taking impartial steps against the Indian elite. One such instance, where the government stance was demonstrated as early as 1854, was the official decision in the case between two influential propertied men. One of them was a judicial officer, Maulvi Basiruddin, who held extensive lands in Pabna. He had a relative and a rival in Azeem Choudhury, who also owned extensive lands in Pabna, and was known to be "one of the most powerful and certainly the least scrupulous of the zamindars of the District". The Moulvie and Azeem Choudhury had a running feud which had generated *faujdari* cases in the district.

The Joint Magistrate of Rajshahye noted the tension between the two landlords at the Pabna Sessions, when the Maulvi had accompanied him to the court, and was sitting in as an assessor. He solved the problem by transferring the Maulvi to another district. This, he explained, would remove any doubts of judicial bias from the minds of ordinary people for "the results of the Sessions trials are ascribed by the low classes to the influence of the officer who sits with the Judge". His action was guided, not by any fault of the Maulvi, but by the desire to sustain and propel the British idea of justice, and he declared, in extenuation of his unjustifiable action - "I would never give up any positive benefits for the sake of appearances in the eyes of the natives ... I hold familiar intercourse with European residents in the District, although parties opposed to them who lose their cases may and probably do ascribe the result to undue influence arising from such intercourse. But I would always respect prejudices where no evil could result from

the concession". Thus, when it came to judicial administration, the English were projected as a homogenous ruling class, with a degree of immunity from that judicial impartiality which was shown to the indigenous population.<sup>76</sup>

Even while exercising power within the judicial system, a "native" judicial officer had no power vis-à-vis the British administration. This is exemplified in another instance of a law officer in the district of Pabna, being brought to book for giving offence to an Englishman, an indigo planter.<sup>77</sup> This again demonstrated the slant of colonial policy in the 1850s, and was a portent of a far more explicitly stated imperial policy two decades later. Not only had the unnamed Munsif of Ghoonapara kept Kenny's English agent waiting but was also guilty of singing "Bengali and Hindoostanee songs" and asking impertinent questions after he had finally called him in, all of which were considered as insults by Kenny's agent and by Kenny as well. The Munsif, a Muslim, protested his innocence, saying that "music is accounted sinful in the Shura Shureef ... and that if musically inclined [he] would not sing on the Bench".<sup>78</sup> He was disregarded, warned of the inevitability of dismissal on the repetition of such conduct and transferred to Nitrokonah.<sup>79</sup> Kenny's demand for governmental aid in bringing the Munsif to book was sheathed in concepts of justice and legality. His petition therefore avoided the issue of personal insults and turned it into a moral issue as "the person who, invested with authority and who, under its cloak", abused his position, must, "in the same manner insult hundreds and thousands of their poor fellow-subjects who have not the means or the spirit to seek redress".<sup>80</sup> In the 1850s the educated elite in Bengal, then, could not use the "language" of legality and justice adeptly, something which the English ruling class could do.

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<sup>76</sup>Magistrate of Pabna, to Commissioner of Circuit, Rajshaye Division, Pabna, 28 Sep. 1854, 272, 190, BJP 5 Apr. 1855, IOL.

<sup>77</sup>Petition of Mr. Kenny, to GOB, Sulgurmoodea, Pabna, 8 Aug. 1854, 227, 230, BJP 22 Mar. 1855, IOL

<sup>78</sup>Judge of Jessore. R.K. Skinner, to Register of Sadar Dewani Adalat, 8 Aug. 1854, 2111, 230, BJP 22 Mar. 1855, IOL

<sup>79</sup>*Ibid.*, S.no., 294, L.no.232, and s.no. 2111, L.no. 230

<sup>80</sup>Petition of Kenny, 8 Aug., 1854, 227, 230, BJP 22 Mar. 1855.

The official attitudes that had started to evolve, had hardened by the 1870s. The 1870s brought home, via some incidents, that the whole set of the colonial legal and penal institutions was geared to suit the imperial design. The public trial of the Gaekwad of Baroda demonstrated this trend.<sup>81</sup> As a prominent public figure, carrying with him the vestiges of political power, and brought low by a public trial and then jailed, he was considered tragic by the bhadralok. A declaration, on an avowedly narrow social and political platform, which accompanied the trial of the raja, revealed an awareness of the growing feeling of collective consciousness that the bhadralok ascribed to themselves: "the interest which the educated natives take in the Baroda question is intellectual and moral ... the English education has given India what it never had before - we mean public opinion ..."<sup>82</sup>

There were plays written on this subject expressing the resentment of Bengalis against the high-handed and farcical trial and imprisonment of the Gaekwad, and a protest against the expressed "vulgar European belief that Native princes are monsters in human form".<sup>83</sup> Hirakchurna Nataka or The Drama of the Diamond Dust dwelt on the fate of the Gaekwad in jail: his queen verbalised what was vociferated in the newspapers.<sup>84</sup> She came to the prison on a visit to her husband, and witnessing Malhar Rao's "unkempt, poverty-stricken figure and his position as a prisoner" she erupted into speech:

How long am I to see this condition of yours? Give me courage,  
you have patience, and start arming yourself: you can't be imprisoned  
for an indefinite period ... I myself will fight the English ... There is no  
way I can stay longer, tell me quickly what you want me to do.<sup>85</sup>

Malhar Rao's pathetic condition and Lakshmi Bai's loyalty, both played out in a colonial prison, with specific hours for visitors, and rigid discipline, symbolically depicted the

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<sup>81</sup> Hindoo Patriot, 8 Mar. 1875.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Pratibha Biswas, "Hirakchurna Nataka" in Huzur Darpan, P. Biswas (ed.), Calcutta, 1983, pp.83-98.

<sup>85</sup> Ibid., p.98.

bhadralok's engagement with the question of their own subordination. Such farcical trials and unfair prison sentences reflected their own grievance against colonial rule. The grief and anger of his queen, Lakshmi Bai, who represented a classical construction of an image of "heroic womanhood" in drama, might also be read as the symbolic political arousal of the women of Bengal.<sup>86</sup> Against this can be placed the newspaper reports of the trial, and the articulated disapproval of the bhadralok who felt that even if the charges of poisoning Colonel Phayre were proved against Malhar Rao, there was justification for such an act, for it was "evident that he had no other than this atrocious way left him to be freed from all the oppressions of the Resident".<sup>87</sup>

In 1878, the incident of Har Sahai, the subordinate judge of Farakkabad, who "attacked" his superior, Saunders, the judge of Farakkabad, brought the realisation that even judicial officers, conversant with the legal language, were powerless to raise a voice against open injustice. Whatever their official position, they were, and always would be "subordinates". Though the incident took place in the United Provinces, the Bengali intelligentsia became far more focused in the statement of their resentment, and the focal point of the problem was localised in the nature of colonial rule, that as the subordinate race, they would not get a better deal in the justice of the ruling race. Har Sahai epitomised the problem of the bhadralok and the empathy of the Bengali middle classes with Har Sahai's position was a crucial visible development of the late 1870s.

The official narration of events was taken up by Saunders, the Judge of Farakkabad, as the chief spokesman and the victim of the "assault" by Pandit Har Sahai. The European official body rallied around Saunders, and the Magistrate, C.W. Watts, dismissed the Pandit's contention that he had only ward off Saunder's attempt to eject him from his (Saunder's) veranda.

Har Sahai's petition to the Governor General reflected the educated Indian elite's faith in the ultimate justice of the legal and penal institutions and the government,

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<sup>86</sup>Indira Choudhury Sengupta, "Colonialism and Cultural Identity: The Making of a Hindu Discourse, Bengal 1867-1905", Ph.D thesis, SOAS, 1993, pp.304-309.

<sup>87</sup>Pratibha Biswas (ed.) *Huzur Darpan*, Calcutta, 1978, Appendix G, p.166, from Political Despatch to India, No. 53, 6 May, 1875 on "Language of Articles in Native press. Natorer Kabita".

however ill-disposed the local European official's attitude might be. The "most embarrassing case" was buried in oblivion with the retirement of Har Sahai after having been judged not guilty, as Lord Lytton felt that the friction between the European official superior and the "native" Indian subordinate "was damaging to the official character of each". Further, such irresponsible behaviour of both the officials had jeopardised the "general strength, credit and authority of the governing power in India. For of that governing power, they are, each of them, representative factors". The incident also drew forth from Lord Lytton a clear enunciation of the "ideal judiciary", which delineated the imperial policy that would not antagonise the Indian, and yet would not compromise the dignity of the ruling race. It was pertinently pointed out by Lytton that "if it be widely known that the highest local representatives of the ruling European power (the local government and the High Court) have recognised and resented the alleged ill-treatment of the superior European by the inferior Native officer concerned", Indians would be antagonised by such overt bias. For this reason, the Government of India was desirous of keeping the details of the case concealed, as it was thought the case could create tension between the ruler and the ruled.

This, however, could not be avoided and the issue was taken up by the bhadralok, analysed, and the problems of the bhadralok as a class stressed. Har Sahai was consonant with the mentality of the bhadralok, who fully sympathised with his rage at the "insolence" of the "offensive bearing that so commonly marks the low-born Mahomedan. The class have none of those traditional instincts that make the well-born Mahomedan a gentleman".<sup>88</sup> Har Sahai's impotent anger against the Nazir of his court, who had the backing of Saunders, his European official superior, was felt to be symptomatic of the dilemma faced by the bhadralok. The European official had to be conciliated, at the cost of personal dignity, and Har Sahai was therefore "anxious to be supported by his superior" in the matter of the Nazir's dismissal; hence his visit to the Judge's bungalow. Denied entrance by the *chaprasi* (steward), Har Sahai "lost his temper, as we probably should have lost ours, and ninety-nine men out of a hundred ...

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<sup>88</sup>Hindoo Patriot, 3 Feb. 1879.



Can we really be surprised, that the Pundit was intensely indignant?" He had been dismissed from the service without an open trial, which he had demanded, and to which he was entitled under the law, and which he did not receive. "The greatest attraction for service under the British Government is the certainty of justice; ... But Pundit Har Sahai's case points a moral which we cannot help saying is humiliating".<sup>89</sup>

The feed-back from similar cases of miscarriage of British justice and the indignation of the *bhadralok* form the back-drop to the imprisonment of Surendranath, a public figure in Bengal. The analysis of these cases reveal the frustration of the *bhadralok* with the judiciary, and an awareness of the close connection with the harassment of the *bhadralok* in the criminal court. Articulation of dissatisfaction with cases like Har Sahai's served as converging points and helped to focus and verbalise the connection between the nature of colonial rule and the difficulty of achieving legal redress. An instance of such resentment in 1879 is immediately visible in a typical reaction - "The Monghyr case ... tell[s] the same tale of high-handedness, magisterial vagaries, oppression, and injustice".<sup>90</sup> The collusion of the Magistrate with the English indigo planter was apparent - "Here was the head of the district, the guardian of the rights and liberties of the people, who befriended the indigo planter, his countryman, regardless of law, propriety and justice". The petitioner, Jettoo Lal, was already suffering a prison sentence, for having "forcibly ploughed lands" supposed to have belonged to the indigo factory. Jettoo Lal's master, Mohunt Lachimdas, was imprisoned, while on the fields, by the Magistrate, and the lands forcibly taken away, contravening the High Court orders. The ryots, who had protested against the seizure, were also taken as prisoners. The ryots had even actually "rescued" some of themselves, along with Lachimdas, from being arrested. But to a partial local judiciary, they had acted "using criminal force". It had taken the Sessions judge to decide that, as the lands had not been in the possession of the factory, the Magistrate had no "legal right" to arrest the ryots, and that the "forcible rescue" was not "criminal". Moreover, the protesting ryots, obeying the *thikadar* as the "controlling

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<sup>89</sup> *Ibid.*

<sup>90</sup> *Hindoo Patriot*, 19 May, 1879.

authority", were careful not to cross the legal limit. Therefore, the knowledge of legal procedures had increased considerably, not just with the educated elite, but also among ryots, and illegal imprisonment was resented by the educated elite as well as the ryots. Though the ryots and Lachimdas were later acquitted by the Sessions Judge of Bhagulpur, J. M. Lowis, Lachimdas unnecessarily suffered the harassment of being in the *hajat* for 28 days without a trial, for an offence which was punishable by a fine, and definitely bailable.

Jettoo Lal's petition to the Magistrate, Mr Magrath, appealing against the sentence of three months simple imprisonment for was not heard. Instead, he "learnt to his surprise that ... Mr. Magrath had on the 30 January not only dismissed [the] appeal, but enhanced the sentence ... to six months' imprisonment and a fine of Rs. 100, or in default to undergo rigorous imprisonment for six months in addition".<sup>91</sup>

The condemnation of such misuse of the courts and jails demonstrates, that by the late 1870s, the middle classes had come to the conclusion that the "illegality" of the colonial administration took place under a "legal" cloak: protest against such "illegality" then became "criminal". However, there was still a reluctance at this point in time to lump together government policy and "the high-handed proceedings of Magistrates of the Magrath stamp". It was felt that the institutions functioned fairly well inspite of magistrates like Magrath. "Happily the machinery, which the Government has provided for the administration of justice, supplies the antidote for the poison which taints it".<sup>92</sup>

This disillusionment with the legal system was faithfully reflected in Surendra-Binodini Nataka, written in 1879, where the name of Magrath, was close to that of the Bengali-speaking, villainous Magistrate of the play, Macrendal.<sup>93</sup> He sentenced many poor people to short jail terms without trials, and was finally lynched by prisoners in the jail. The government took steps in August 1877 to ensure that such defiance of authority was discontinued on the stage. The theatre manager and leading actor were arrested and

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid., p.234

<sup>93</sup> Anonymous, Surendra-Binodini Nataka, Upendranath Das (ed.), Calcutta, 1875-76.

prosecuted, but were acquitted by two liberal English judges.<sup>94</sup> Thus, by in the late 1870s, the legal courts were transforming rapidly into the appearance of a stage where "illegalities" were perpetrated in full view of the public. In the 1880s, when the Ilbert Bill agitation broke the surface, the middle-class reaction to the chauvinism of the British was violent<sup>95</sup>, based on a sharpened perception of the nature of the colonial rule and culled from the experience of the last decade.

Surendranath Banerjee's case culminating in a jail sentence was an eye-opener for the bhadralok at this point. Long had been the first to be politically pursued in court in a trial blazing with publicity, and jailed on controversial ground, with the bhadralok protesting weakly. But the memories of that case were resuscitated only in the 1880s, twenty years later. The trial of Surendranath Banerjee was the episode that spelt a dramatic turn of events, though the catalytic factor, Surendranath himself, proved to be a reluctant one. The editor of the English newspaper, the Bengalee, the voice of middle-class protest against the administration in the 1880s, Surendranath was sentenced to two months' simple imprisonment for writing a defamatory article about Judge Norris, who had ordered the production of a Hindu idol in court, and had also criticised his general public conduct. Surendranath, in a panic-stricken telegram-cum-memorial, had informed the Private Secretary to the Viceroy that he had "made complete apology and urged Court had no power to punish for contempt out of court", and then had prayed for the sentence to be suspended pending reference to the Privy Council.<sup>96</sup> As the man who was recognised to be a towering figure of bravery and self-sacrifice by the educated middle classes, Banerjee showed himself to be a reluctant pioneer, dragging his steps to the jail, and protesting all the way.

I pray Viceroy in-Council be pleased to call for papers and submit

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<sup>94</sup>Raychaudhuri, Europe Reconsidered, p.19, quoting from Brajendranath Bandopadhyay, Bangiya Natyasalar Itihas, Calcutta, 1933, pp.201 - 02.

<sup>95</sup>Barun De, "Brajendranath De and John Beames: A Study in the Reactions of Patriotism and Paternalism in the I.C.S. at the time of the Ilbert Bill", Bengal Past and Present, CVI, Parts I & II, nos. 202-203, 1987, pp. 236 - 50.

<sup>96</sup>Memorial from Surendranath Banerjee, Presidency Jail, Calcutta, 6 May, 1883, Home, Judicial, nos. 382-396, May 1883, NAI.

case to Privy Council ... as was done in similar contempt cases ...  
 Question whether Court can summarily inflict greater punishment  
 than that under section 480 Cr. P.C. which applies to the High  
 Court. In my case no specific charge of contempt stated.  
 Sufficient time not allowed to answer, and High Court had no  
 jurisdiction.<sup>97</sup>

The Government, however, was determined to make Surendranath appear in the light of a victim for the future of the political movement which centred around the jails and the courts, which fed on events like Surendranath's trial and subsequent jail sentence. Thus, despite Surendranath's frantic pleas to be spared the privilege, on 31 July, 1883, the Secretary of the State for India informed the Governor-General that the Judicial Committee had upheld the verdict of the Court.<sup>98</sup>

The bhadralok response to Surendranath's martyrdom was much in excess of the actual cause of imprisonment. It was a symbol of the coercive power of the state, especially the imprisonment of a member of the bhadralok for no other reason than perceived political dissent. The jail had made a convincing arena of protest, not so much intended by the person jailed, but as the result of the fall-out of a decade of discussion and analysis of the courts and the jails. The Ilbert Bill had already focused the attention of the bhadralok squarely on the "miscarriage of justice" in criminal courts, and Surendranath's trial exemplified "the need to be tried only by native Judges", thus holding out the view of biased judgement against European judges.<sup>99</sup> The jail, as the accepted retribution of "sin", was undergoing a transformation to change its role as the place of confinement for the "saintly Surendranath". The Pratinidhi, echoing the voice of many newspapers, had reported the "unjust imprisonment" of "the saintly Surendranath" for attempting "to do good to the public", and that he was being visited in jail by "innumerable people so that sinful prison has ... been converted into a place of

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<sup>97</sup> Ibid., NAI.

<sup>98</sup> Home, Judicial, nos. 12-13, Sep. 1883, NAI.

<sup>99</sup> Prabhati, 15 May 1883, No.22, BNNR 1883, p.235.

pilgrimage [sic] in India".<sup>100</sup>

Surendranath's precedence as a jail-goer had become a position of honour, and from the manner of the reception of this sudden turn of events, the trend of future protests could be traced. Burdwan Sanjivani captured this change in attitude towards the jail as a place to voice a protest, and that Surendranath's example to be emulated by many. This sentiment, of Surendranath being "envied by his fellow-country-men" and the "recent trial ... but served to enhance his glory" was symptomatic of the change in the bhadralok attitude to the jail and the court.<sup>101</sup> The prison, then, instead of being dismissed as a reserved space, with its rigorous system of discipline and punishment, for the confinement of the "sinful", began to be seen as the "place of pilgrimage", a transformation of perception crucial to the politicisation of colonial legal and penal institutions. The double-edged role of suppression of political dissent on the part of the colonial government within the ambit of these institutions, and the confrontation of such suppression from within the same arena was played out from this point in time. For the first time, Long's trial was resuscitated in the educated middle-classes' memory, and the two political imprisonments were linked together, with a gap of twenty years in between with penetrating analysis - "the agitation caused by the imprisonment of Babu Surendranath Banerjee is not confined to Calcutta alone, as was the case when the Reverend J. Long was sent to jail, but has extended over the whole of India".<sup>102</sup> The cases were beginning to be knitted together to form a trend, a self-taught lesson which the bhadralok would not forget. A careful reconstruction of events, starting from the capital sentence passed on "Nun Koomar", then evoking the jail sentence of Long, and the political developments like the Vernacular Press Act of 1878, the Har Sahai case and the Ilbert Bill controversy was responsible for identifying the "criminal court" as the bastion of colonial authority.<sup>103</sup> The realisation grew that "laws are uncertain in their operation only when we are concerned", and that jails were bound to play a large part in

<sup>100</sup>Pratinidhi, 17 May, 1883, No. 22, BNNR, 1883.

<sup>101</sup>Burdwan Sanjivani, 18 May 1883, No. 22, BNNR, 1883, p.235.

<sup>102</sup>Prabhati, 21 May, 1883, No.22, BNNR, 1883. pp. 237-38.

<sup>103</sup>Ananda Bazar Patrika, 24 Dec. 1883, No. 53, BNNR, 1883, p.891.

the lives of the educated bhadralok if the vernacular press was to operate freely. Thus, Som Prakash forecast the inevitable trend in any form of political demand put forward by the bhadralok prophetically: "At the present time not a few will have to suffer imprisonment ... so was the editor of Amrita Bazar Patrika and the Reverend J. Long".<sup>104</sup> The unmasking of the legal and the penal institutions as institutions of naked and often unjust authority, then, was visible in such explicit statements as- "If India had been England, Surendranath would not this day have suffered the pains of a prison-house".<sup>105</sup>

The public trial, with the sentence of imprisonment following hard after, triggered spontaneous protests by the younger generation. In fact, prisons and the whole penal institution came to the fore dramatically, as a school-boy was sentenced to imprisonment "for contempt of court" when he demonstrated in the open court his disapproval of the proceedings within it.<sup>106</sup> This was countered by the paper as "harsh" as the protest "ought to have been pardoned, seeing that what he and others like him did on that occasion was done under a fit of temporary madness, caused by their intense regard for one whom they look upon as their instructor".<sup>107</sup> Open trials, from the very inception, had the power to hold up in front of the people an impression of "justice" or its reverse, with its specific dramatic appeal. This appeal was utilised by Surendranath unwittingly, for he had "apologised", and had yet been punished.

The jail began to be perceived as a coercive instrument of the colonial state where the will of the government was supreme and legal rights did not exist. With the refusal of permission of the photography of Surendranath's life in the jail,<sup>108</sup> coupled with the irregular manner of his release,<sup>109</sup> the jail assumed an "unjust" aspect in the eyes of the bhadralok. Hence the secrecy of the release of Surendranath "before daybreak" from the

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<sup>104</sup> Som Prakash, 14 May 1883, No.21, BNNR, 1883.

<sup>105</sup> Sanjivani, 12 May, 1883, No. 21, BNNR, 1883, pp. 218 - 219.

<sup>106</sup> Sadharani, May 20, 1883, No.22, BNNR, 1883.

<sup>107</sup> Ibid.

<sup>108</sup> Bangabasi, 26 May, 1883, No. 23, BNNR, 1883, p.257.

<sup>109</sup> Sahachar, 4 Jul. 1883, No. 28, BNNR, 1883, p. 382.

Presidency Jail was an important departure from official routine, and recognised as such, for "at about the hour of 4", Surendranath was "brought out of the jail ...", accompanied by the police. When Surendranath had objected to the proceedings on the grounds of illegality, "the jailer replied that was the order of the Bengal Government". It was also an indication that the government could be intimidated by a prospect of "the mad demonstration of feelings by the people" and feared that a crisis "of the nature of a political revolution would occur. Otherwise where was the need for this precaution, involving the violation of law?"<sup>110</sup>

The dramatic appeal of the courts was noted and henceforth were used by the rebellious students to protest against the system. From this time onwards, then, punishment in the jail for the bhadralok or for their sons was condemned, and there were enough cases coming up in the court to keep the issue alive. In Dacca the sentence of imprisonment passed on a school-boy revealed the insecurity of foreign rule for - "It is hard to see what accession to its political strength government has received from the imprisonment of a school-boy for a trivial offence".<sup>111</sup> The flogging of students ordered by the Joint Magistrate of Dacca<sup>112</sup> also whipped up pungent criticisms of the legal and penal institutions, especially at the government's resorting to a punishment "intended for the lower classes only".<sup>113</sup> The newspapers constructed mock trials of the school-boys receiving stiff sentences, and one such fictitious trial depicted the English magistrate completely devoid of legal knowledge and completely swayed by the arguments of the Bengali barrister. The trial reversed the myth of the legal expertise of English magistrates, and endowed the Bengali barrister with irrefutable logic and legal acumen. Thus the normally subordinate educated Bengali, from a position of personal powerlessness, envisaged himself in a visible role of command, countering, correcting and instructing the representative of the colonial government on the right manner of judicial administration, a matter supposed to be the prerogative of the ruling class.

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<sup>110</sup>Pratinidhi, 5 Jul. 1883, No. 28, BNNR, 1883, p. 382.

<sup>111</sup>Ananda Bazar Patrika, 24 Dec. 1883, No. 53, BNNR, 1883, p.891.

<sup>112</sup>Sanjivani, 15 Mar. 1884, No. 12, BNNR, 1884, p. 323.

<sup>113</sup>Navavibhakar, 14 Apr. 1884, No. 16, BNNR, 1884, p.443.

Exercising logic and legal expertise on behalf of the students sent up to the magistrate for "unlawful assemblage", "committing a breach of peace", and "causing loss to and insulting respectable people" by the police, the barrister proved that none of these charges was true, while at the same time exposing the magistrate's ignorance of the law. The magistrate, recounting similar cases of trials of students, asked the barrister - "in Jessore, ... Dacca, Mymensingh, the Calcutta High Court, and other places whenever the Judges have tried the cases of students they have not strictly followed evidence or proof, law or regulation. Why should I then act according to law?"

The reply of the barrister, instructive, reasonable, couched in legal terms, wrested away the authority by the "rule of law" of the magistrate and infused into the actions of the ruling race unreasonableness, injustice and ignorance: "The judges in those cases have indeed done injustice, but have punished the boys after framing a charge. But the police have not been able to bring a charge against these boys".<sup>114</sup>

By the 1880s, then, it is clear that the bhadralok saw themselves on a par with the colonial government, imbued with knowledge enough and expertise enough to contend with the colonial government on its own ground. It was increasingly felt that the government was uncaring of the "life and property of the inhabitants", the police possessed "boundless power", and that its minions, the magistrates did "not value educated natives or honour men of position and respectability". It is this concern about the indiscriminate power of colonial law that caused the bhadralok disquiet. It was on this plane that the bhadralok felt the necessity to co-opt the voiceless fear of oppression of the chhotolok, the burden of injustice it was powerless to contend with in the law-courts or as prisoners, as labourers, as coolies, as peasants, and thereby, to focus its own deeply-felt fears and ambitions on a broader base.

The bhadralok perceived the connection between the nature of colonial rule and the institutions of control. Thus the exposition on the collusion of medical evidence, the bond of the ruling class in shielding even criminals of European extraction, had been fairly well-developed: biting satire was resorted to in the newspapers to lay bare the

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<sup>114</sup>Ananda Bazar Patrika, 18 Aug. 1884, no. 34, BNNR, 1884, p.1039.



injustice of the courts. The chhotolok were necessary adjuncts as the victims of the colonial justice. Sulabha Samachar, in an article entitled "Bursting Pain", characterised the helpless victim as a "coolie", killed by the blow of a nonchalant, cigar-smoking, European factory owner, Mr. Rogue, in the town of Kritantapura (the city of death). He was aided in legally covering up the murder by Dr. Bribe, who misrepresented the medical evidence. The doctor assured Rogue of his supporting evidence: "Oh ho! Certainly! I shall prove it. I have read in anatomy that there is a close connection between the nose and the spleen. But Mr. Rogue, you must do one thing: give a few rupees to that woman". The judgement delivered in the fictitious trial, reflected the nexus between trials and jails that formed the core of the erosion of the concept of legality from the minds of the bhadralok. Thus the mock trial depicted the victims being sentenced to "imprisonment for six years" for "perjury and false evidence".<sup>115</sup>

### **The Erosion of the Concept of Legality**

These constructions, crossing the border between fiction and reality, constantly oscillated between what was expected and what really happened. Students were tried and sentenced: that was real. The make-believe world, where the English Magistrate was willing to be instructed in law and legal procedure, the justifiability of imposing prison sentences on students, was the expectation on which the rule of law was hinged. The criminal codes, the criminal courts, the criminal trials, all were weighed up for viability in an Indian environment and were beginning to be questioned by some sections of the bhadralok. There was a growing doubt by the 1880s about the general applicability of these colonial institutions, as greater public attention converged on the courts, spurred on by the political developments that took place early in the decade. Surabhi's editorial column printed an analysis of the courts, which revealed how critically the bhadralok had begun viewing the visible symbol of the rule of law, which emphasised the unsuitability of "the Courts established on the model of English Courts". In contrast to the simple and uncomplicated "manners and customs and laws and social organisations" of the country,

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<sup>115</sup> Sulabha Samachar, 29 Dec. 1877, No. 2, BNNR, 1878, p.9.

"the law courts [were] all extremely complicated". Thus "the law courts are so constituted that those that have no money or time to spend are in a manner obliged to go without justice. Government entertains on high salaries foreign Judges, who are quite ignorant of the language and customs of the people".<sup>116</sup>

This issue took on fresh vigour with the debate over the re-introduction of panchayats at the village level in 1882-83. The efficacy of the Indian Penal Code was challenged when compared with the panchayat, which, based on the indigenous social organisation, had done the work entrusted to the magistrates, with a greater degree of efficiency than all the terrors of capital punishment or transportation beyond the seas could achieve or had achieved.<sup>117</sup> The idea that all the laws passed by the government, modelled on the English system, were not applicable in India, was rapidly gaining ground. The consciousness that such legal reforms, and their reification in the Indian courts would spell obfuscation to the general mass of the people, and that "even the educated few" would find the law "unintelligible" was recognised.<sup>118</sup> How alien the people found the system was assessed simultaneously, and it was said of the jury, that they "are called upon to pronounce upon the guilt or innocence of their fellows, who have never seen a trial or weighed any conflicting evidence in their life".<sup>119</sup>

By the early 1880s, then, the rationale behind the existence of the courts, as given by the colonial government, was questioned. But most importantly, the administration of justice was thought to be ineffectual and thus the people were "losing all confidence in the law-courts ... it is the system that is responsible for this result ... the judges who are mostly foreigners, unacquainted with the manners and customs of the people of this country, find it difficult to judge of evidence given by the native people".<sup>120</sup>

From the mildly critical stance of the 1860s, when the image of the legal and penal institutions was largely untarnished, and miscarriage of justice was attributed

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<sup>116</sup>Surabhi, 10 Mar. 1884, No. 11, BNNR, 1884, p. 310.

<sup>117</sup>Hindu Ranjika, 19 Mar. 1884, No. 14, BNNR, 1884, p.371.

<sup>118</sup>Medini, 11 Feb. 1880, No. 8, BNNR, 1880, p.4.

<sup>119</sup>Ibid.

<sup>120</sup>Sadharani, 8 Aug. 1880, No.33, BNNR, 1880, p.6.

merely to individual officers, the attitude of a highly politicised section of the bhadralok had hardened to a scepticism which extended to the whole system. The criminal courts became the target of attack, for "injustice" in the criminal court implied imprisonment in the jail, which in turn, symbolised the epitome of suffering for the bhadralok. Justice emanating from this institution was suspect. Thus Ananda Bazar Patrika waxed indignant at the "considerable injustice and oppression [that] are committed in this country in connection with criminal trial".<sup>121</sup> The "rigorous rule" of the government, against the wishes of the Indians, was achieved through the Criminal Procedure Code, "the chief instrument by means of which that rule is enforced".<sup>122</sup> The educated middle classes, collating the experience of colonial rule, could analytically observe the close co-operation between the courts and the jails to keep the voice of dissent under control in 1884. Thus Pratīkar predicted the government reaction against dissident voices:

At any moment they can reimpose the Press Act and compel the editor to live in a white-washed room in a jail. The English are the rulers ... the law is created by them. It is written in their own language and they only can interpret it properly. Where is the man that can object to their interpretation of the law?<sup>123</sup>

At the same time, there was another stream of thought, equally dominant, of the maintenance of these institutions for the "criminal classes". This ambiguity in the assessment of "the foreign institutions" introduced by the colonial government haunted the bhadralok, not just till the 1880s, but remained characteristic for the whole of the period explored in this thesis.

### **The Bhadrlok and the Jails: Newspapers and Views**

The publicity given to the miseries of the bhadralok in the 1860s made the middle classes aware of the penal institutions, and the jail administrative reports made them conscious of

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<sup>121</sup>Ananda Bazar Patrika, 12 Jan. 1885, No. 3, BNNR, 1885, p. 102.

<sup>122</sup>Ananda Bazar Patrika, 14 Apr. 1884, No. 16, BNNR, 1884, p.452.

<sup>123</sup>Pratīkar, 18 Jul. 1884, No. 31, BNNR, 1884.

occurrences like prison-riots, not just in Bengal, but from other provinces as well. The gathering strength of this discourse which had "outlawed" the punitive institutions long before "the prison came to be colonised by middle-class nationalists from the 1890s onwards", will be the subject of this section.<sup>124</sup> This discourse started with some references in literature, that concentrated solely on the sufferings of the bhadralok caught in the maws of the criminal courts and the jails. The role of the press helped to formulate this angle of bhadralok identity, which gradually took shape because of the myriad instances which came to light through this medium.<sup>125</sup>

The 1850s had seen, from the side of the British Government, a regularising of the penal institutions. A common messing system,<sup>126</sup> a more regular basis of labour was established by F.J. Mouat in Bengal<sup>127</sup> and prisons were attempted to be made more conducive to discipline and punitive labour. An organised hierarchy of jail officials was created, the lower echelons of the jail-officials were the convicts, a system open to much corruption and much criticism, but never abandoned "because it was economical rather than because it was efficient".<sup>128</sup> This was, however, a process initiated and carried through by the colonial government, without any feedback from the Indian opinion, which remained aloof from such "governmental concerns". The bhadralok thus lagged behind the official discourse in the 1850s. But the 1860s marked a change, as has been established in Chapters Two and Four.

In 1861 Abhaycharan Basu complained as a member of the bhadralok about the difficulty of maintaining caste within the Burdwan jail, the rapaciousness of both the European and convict officials, and the power of money in prison. What was highlighted was the financial demands made on Basu. If he could not meet the demands, he was "made to clean unclean places and had to bear other insults, and was even whipped by

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<sup>124</sup>David Arnold, "The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India", in D. Arnold and D. Hardiman (eds.), *Subaltern Studies*, VIII, Delhi, 1994, pp. 150-152.

<sup>125</sup>Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, (1985) 1991, used in the sense Benedict Anderson has used.

<sup>126</sup>Arnold, "The Colonial Prison", pp.150 - 52.

<sup>127</sup>*Ibid.*, p. 153.

<sup>128</sup>*Ibid.*, p.154.

the Sergeant and the Jamadar".<sup>129</sup> As a *bhadrasantan* (son of a respectable man) and a *vakil*, his complaint captured the attention of both the bhadralok and the government. This earlier period of the middle-class attempt to understand the working of the jails, reflected in literary sources, like novels and plays, has been discussed in Chapter Five. The Hindoo Patriot, continuing the tradition in 1872, condemned "an injudicious order touching rooted prejudices", responsible for sparking off an attempted jail-break. This could upset "all that has been achieved by the wisdom and forbearance of a whole race of statesmen". The unwise removal of the sacred-thread by Dr. Eades, from non-regulation clothing, was responsible for the riot and Eades "found, as many persons have found before him, that this bit of common cotton thread was to the prisoner" in the nature of a shield.<sup>130</sup> But at the same time the justification of the imprisonment of these Brahmins as a "band of desperadoes", who would endanger the law and order situation if "they would have been let loose on the country" was expressed, thus tacitly accepting the colonial jail's power to imprison and punish. The Bengali bhadralok proved adept at this kind of interpolation with the experiences of other provinces, and fitting them into their own, in a kind of literary transposition.

As the concern of the bhadralok with the active administration of the country grew, the connection between the criminal courts and the law, and the jail administration became the gauge of the extent of the sufferings of the Bengali under rigidly controlled circumstances. For instance, in 1872 an enquiry into the administration of the Presidency Jail was called for by "An Upholder of Humanity", to enquire into "the death of a prisoner attributed to other causes than severities inflicted on him in the Tread Mill department of the Presidency Jail". The accounts of the "time-expired prisoners" had thus created the demand for the need of investigation into the jail administration in the Presidency Jail: thus "information was elicited as to the manner in which Jail Discipline is practised ... and the treatment prisoners are subjected to in that reformatory

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<sup>129</sup>Som Prakash, 3 Mar. 1861.

<sup>130</sup>Hindoo Patriot, 8 Jan. 1872.

institution".<sup>131</sup>

Thus, having stated the terms of enquiry to be "humanitarian", the jail was held up as the coercive institution that either conformed to, or rejected the "humanitarian" principles that it was known to be based on. This was the justification of the existence of jails as the logical adjunct to the criminal courts, where the perpetrators of "heinous offences", or criminals had to be broken of their criminal tendencies, and reformed in the best liberal tradition of the British rule in India. When the institution repeatedly fell under this standard of the "humanitarian reformatory", the institution was never blamed, but the administration. The *bhadralok* found nothing contradictory in emulating the official tone, to mark the contribution of Drs Mouat and Fawcus in transforming the "bad prison administration", and handing over the comparatively healthy system to Dr Heeley:

the present system of jail administration was Dr. Mouat's own, and that in carrying it out he had to contend with great difficulties ... Our jails under Dr. Mouat were certainly no perfection; but he made the first attempt to make the prisoners happy and contented, and leave the prison-houses reformed beings altogether.<sup>132</sup>

The *bhadralok*'s critical assessment of the prisons, therefore, could not leap across the barrier of the jail as a "reformatory", which taught the work-ethic through penal labour. This idea had an irresistible compulsion for the *bhadralok*. The jail as a penal institution was seen to be a necessary adjunct for the continued healthiness of a society, where the malcontents could be shut up from time to time and set back on the right path by being retrained through "honest labour", to value the principles of "honest livelihood" which the criminal had lost. The *Hindoo Patriot* could therefore say: "Whether he [Mouat] paid more attention to industrial success than to the penal object of imprisonment is a fair question of enquiry; but it would be most unjust to condemn the system because it might have been over-wrought on some points".<sup>133</sup> The efficacy of the prison system set up by

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<sup>131</sup>*Ibid.*, 2 Sep. 1872, p. 425.

<sup>132</sup>*Ibid.*

<sup>133</sup>*Ibid.*

the British, especially as compared to the treatment of prisoners during Muslim rule, was unquestioned. The Som Prakash, in vindication of the colonial government's open reports on the jail administration, with its systematic sets of information, felt in 1883 that the "mild treatment of the British Government towards the prisoners has the effect of making the people loyal and attached to it. The Government acts wisely in publishing year after year, its proceedings in every department, and thus giving the people an opportunity of judging the merit of its own actions".<sup>134</sup>

The jails as an additional source of income, exacted through the labour of the prisoners, as devised by Dr. Mouat, was commended, and the intent of the government to retain the punitive institution as that alone, and not as a profit-making organisation, was not well-received by the bhadralok.<sup>135</sup> It was felt that the government should not preclude from its options "the obligation to enforce economy wherever practicable, consistent with efficiency".<sup>136</sup> This, therefore, indicated that bhadralok opinion had no objection to the prisons being used as a profit-making institution, where prisoners were made to labour and be productive (discussed in Chapter Five). Thus, by allowing themselves to be shaped by the official discourse, yet with certain prejudices of their own, the bhadralok found themselves in a strange, ambiguous position of approval of the principle, yet not being able to endorse the praxis. This duality was resolved by using as the victim of the punitive institution a member of their own class, for whom a sympathetic understanding was necessary. The conditions of the general jail population could only be measured through the sufferings of their own class, and therefore this view was biased. It was in this perspective that the administrative discourse was crucial to the development of the bhadralok's opinion of the jail and the jail population as they lacked the required knowledge of the interior of the jail at this point.

For instance, the official view presented in a Resolution by the Lieutenant

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<sup>134</sup>Som Prakash, Jun. para. 36, No. 27, BNNR, 1883, p.355.

<sup>135</sup>Hindu Patriot, 2 Sep. 1872, citing Bengal Administrative Report, 1871, "The Government may properly regulate the conduct of its prisons which would be directed to the well-being of the country ... and not with a view to the mere direct profit of prison labor, which is on a comparatively small scale after all".

<sup>136</sup>Ibid.

Governor of Bengal on the administration of jails, that the ordinary jail population were put behind bars because they did not know any better, and were "uneducated", "ignorant", and had no concept of the work-ethic. This work ethic was what the jails instilled, as the "Indian prisoners" were amenable to prison life and discipline, and were not sullen or ferocious "ruffians", whom no amount of principled reform could rectify.

By far the greater number of them are ... tolerably industrious ... it is only a rare exception when a man is at all refractory. Like all natives, they are very difficult to drive into European ways, but are very easily led into intelligent and industrious habits after their own fashion. They readily reciprocate a little kindness and friendly feeling, consider themselves in a way the servants of the government, and are very pleasant and biddable.<sup>137</sup>

This view was accepted with alacrity by the Hindoo Patriot. It was thus a curious mixture between the desire to believe in the ideal of Western liberalism and a patronising attitude, springing from Indian culture, towards the chhotolok. The influence of Western penal institutions, their conditions and the method of treatment of prisoners was perhaps also an incentive to see changes in the jail-discipline and better treatment of the prisoners in general. This feeling, therefore, was borrowed, and the concern for the mistreatment of the prisoners in the jails remained at a very low level. The tragic fate of the bhadralok caught up in the double bind of imprisonment and the accompanying humiliation was the focal point of the bhadralok discourse. Their humiliation was heightened by the forced co-habitation with the vulgar, crude chhotolok, and the rough treatment meted out to them by the jail officials, who in society were far beneath them in social status, an aspect dealt by all the earlier literature.

The response of the bhadralok to certain aspects of Campbell's resolution which treated jail mortality lightly, was extremely critical. More than ill-treatment, he put down the mortality rate to the depression which accompanied a sentence of imprisonment, and was therefore, not in the hands of the government to prevent as "natives confined,

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<sup>137</sup>Ibid.



disciplined, and forced into habits not their own, will always be liable to an abnormal death-rate".<sup>138</sup> The connection of two factors that made the jail a deterrent factor in the commission of crimes, was the separation of the families, and the fear that if convicted and thrust into jail, they would never see their families again, as they might die, a possibility that prevented the commission of serious crimes.<sup>139</sup> The argument of the resolution, that if the jails were made "very healthy" the likelihood of the deterrent factor of imprisonment would lessen, was considered specious by educated opinion. The reality of this fear of death among the jail-going population could be discerned in Girishchandra's account of the Munshi and the thief, Chhira, who felt that they might never see their families again, as their chances of survival in jail were slim.<sup>140</sup>

This open acknowledgement of the high death-rate and not of prison discipline being the source of terror, had the Hindoo Patriot questioning the basis of a jail administration that held human life so cheap. This ambivalent attitude of the bhadralok, oscillating between a sense of the usefulness of the penal institutions, something which was felt to be necessary, and the need to treat prisoners once they were imprisoned "humanely" was the main strand of thought as judged from the analytical criticisms levelled at the punitive institutions:

Restrictions of personal liberty, separation from family, and the *disgrace* which imprisonment carries in native estimation, irrespective of penal labor, which prison life necessarily entails, are, we submit, sufficient deterrents....<sup>141</sup>[italics in text]

The jail discipline that suddenly reversed the lifestyle people lived outside the walls of the jails was completely regulated by bells, a sound that encompassed all the basic functions of life, eating, sleeping, obeying the calls of nature and bathing. It was an alien world, very difficult to adjust to, a fact emphasised by the literature in the 1870s. This life-style was antithetical to Bengali bhadralok culture: it was itself a punishment, without the

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<sup>138</sup>Ibid.

<sup>139</sup>Ibid., p. 531.

<sup>140</sup>See Chapter Three, pp. 27-29.

<sup>141</sup>Hindu Patriot, 2 Sept. 1872, p. 531.

added scourge of penal cruelty. Thus gratuitous torture within a space designed specifically to prevent escape came to occupy a primary position in the concerns of the educated middle classes. Because of this image, the analogy of the prison, and all its violent modes of protest, like a jail-riot, the killing of the figures of authority, the importance of unity in order to combine against the authorities that were oppressing them, in short forming a microcosmic study of the aspirations of the middle classes amidst degrading conditions and brutal force, where foreign rule and its Indian collaborators did their utmost to keep such aspirations down, was easily transposed on the image of the subordinated nation, infusing it equally with powers of resistance.

The bhadralok argued on the basis of the Indian Medical Gazette's authority: "why ... make penal work harder, which according to the Lieutenant Governor's own shewing would only tend to kill the prisoners?"<sup>142</sup> This medical opinion was evoked to counter the government's stated jail policy, not on grounds of "maudlin sentiment" but on humanitarian grounds: "we say flog the hardened thief or criminal, work him if you like, but don't torture him by means of a slow and painful death".<sup>143</sup>

It is interesting to observe that both the bhadralok and the colonial government tended to show the same paradoxical mixture of the need to be humanitarian and the need to "use" the prisoners. Thus, to the colonial government reform meant that the prisons should not be used for purposes of financial profit, an attitude the educated Bengali found uneconomic and inefficient. This stance revealed that the "prisoner" was looked upon by the bhadralok as a unit of production, who should be kept in good physical order so that the production process could go on uninterrupted. On the other hand, the government's proposal to establish the image of the jail as a "detering factor" by keeping the mortality rates fairly high offended the bhadralok's sense of humanity, which perhaps can be construed as a reluctance to waste cheap human resources. This remained a consistent theme in the demand of the educated opinion on the subject of jail-labour: "The receipts from jail manufactures have fallen off. The deficiency is attributed to less

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<sup>142</sup>Ibid.

<sup>143</sup>Ibid., p.532.

demand for gunny cloth. The subject of jail industry deserves careful consideration.<sup>144</sup> In the 1880s, when the jails were being defied as a site of confinement by one section of the society, the same section could criticise the fall-off in jail-manufacture as convict-labour had been stopped being used for the production of certain articles and condemn "the abolition of the practice of utilizing convict labour in the production of finer articles in jails. This measure threatens to prove injurious both to the convict and to the society in general".<sup>145</sup> Despite the constant concern with the oil-presses as the cause of physical debility of the prisoners, the Som Prakash in a direct contradiction of humanitarian principles felt that "some oil-machines of European manufacture should be set up in the jail".<sup>146</sup>

But the educated middle classes were dependent entirely for their knowledge and the lines of constructive criticism on Western jurisprudence. Liberal articles written by Europeans were the material used by the middle-class intelligentsia to criticise colonial penal policy. For instance, the Hindoo Patriot relied heavily on articles like "Among Continental Jails" published in the Calcutta Review,<sup>147</sup> to contrast the harsh penal policies in Indian Jails and the enlightened one in European countries.<sup>148</sup> The tension between what the bhadralok perceived to be humanitarian issues to which they related as a class, and the need to have a stringent jail discipline informed their vacillating stands on such topics. Their exposition on the subject of the cruelties of jail discipline, and penal labour demonstrated this ambiguity. Campbell's "heartless measures" regarding jail discipline and the next Lieutenant-Governor, Sir Richard Temple's, avowedly softer jail policy, with a critical assessment of the previous policy regarding jails, was endorsed by the Hindoo Patriot: "the sooner he brings jail discipline into unison with the practices of civilised countries the better".<sup>149</sup> Yet despite this concern with the cruelties within the

<sup>144</sup>Ibid., 13 Dec. 1875 ( emphasis in original).

<sup>145</sup>Sahachar, 18 Apr. 1883, no.17, BNNR, 1883, p.177.

<sup>146</sup>Som Prakash, 19 Jul. 1880, no.30, BNNR, 1880, p.8.

<sup>147</sup>John Macgregor, "Among the Continental Jails", Calcutta Review, Vol.LXI, No. CXXII, 1875, pp.231-303.

<sup>148</sup>Som Prakash, 25 Oct. 1875, BNNR, p.499.

<sup>149</sup>Hindoo Patriot, 4 Jan., 1875, p.5.

prisons, the bhadralok started contradicting their own statements at the implied criticism from the government regarding their disapproval of penal discipline. Temple criticised the bhadralok's opposition "to capital punishment", "punishments such as flogging", and even "the hard enforcement of prison discipline", which demonstrated the bhadralok regard for "the person who though guilty, is suffering, than to the interests of society". The Hindoo Patriot refuted the imputation of favouring convicts.<sup>150</sup> "Sir Richard Temple does not do justice to native opinion when he represents it as opposed to the prison-house as a means of prison discipline".<sup>151</sup> The most eminent jurists, including Lord Macaulay, had declared flogging to be "demoralising". Moreover, prison discipline, though necessary, should not be "an instrument of permanent physical disqualification".<sup>152</sup> The physique of the Bengali prisoner, it was contended by the Hindoo Patriot, was not tough enough to take the rigour of the jails. Thus a "captive population", "timid" and "delicate", concepts derived from the colonial discourse, but used in a manner that could be turned against the colonial discourse that had generated it, were used by the bhadralok: "The people of Bengal are weak and delicate, and ... the stringent penal discipline ... have had a deteriorating effect upon the health of the prisoners, and resulted in an increase of mortality".<sup>153</sup> It was believed at one level that the terror the jails held for the people prevented criminal activities, "as many persons now think that it is better to die of starvation than to steal and rob and get imprisoned. This opinion is partly due to moral sense and partly to timidity".<sup>154</sup> These opinions reveal the bhadralok as a community struggling with Western concepts of justice, colonial stereotypes, and their own emerging consciousness as a non-criminal class, which tried to fit in these concepts within this growing identity.

Thus when the more particular note was struck regarding jail administration, the concern of the bhadralok was channelled along the hardships of the prison on the class

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<sup>150</sup>Ibid., 5 Feb., 1877

<sup>151</sup>Ibid.

<sup>152</sup>Ibid.

<sup>153</sup>Ibid., Dec. 13, 1875

<sup>154</sup>Sadharani, 8 Mar. 1885, no.11, BNNR, 1885, p.398.

unused to such harsh discipline, and which reduced the bhadralok and the chhotolok to the same level. There was a liberal assumption of the justice of a sentence of imprisonment imposed on a culprit for transgressing the law, for a specified length of time, but over and above this the bhadralok felt that as a concession to themselves as a non-labouring class, specific privileges should be extended to themselves; as a class used to a certain diet, a certain dignity involving clothing, language, and manners. Under the garb of liberal thinking, the bhadralok therefore objected to the class dignity being violated by wearing the "languta" that "hardly covered the private parts", and being insulted by jail personnel of low castes within the jail. This was the crux of the argument, though it sought to involve the entire jail population in its sweeping condemnation of the penal institution.

There were many scandals regarding the torture of the prisoners, like the death of two men reported in 1884 by two Englishmen who had also been imprisoned in the Presidency Jail. Mr. Beadon was held responsible for the deaths, and the indignation of the press was directed against him. The government appointed a Commission, which was treated as a major triumph for the press, as it was the press that had drawn attention to such cruelties and forcibly engaged the government's concern. These developments invested the jails with the arbitrary power to punish, which the jail officials utilised savagely. This formed a commentary on the jail administration. Thus, in the statement, "Mr. Beadon, whose antecedents can be traced to Cecil Beadon"<sup>155</sup> "refuses to countenance the pleas of the prisoners, compels them to work hard till 3 o'clock at night and Ramshankar's legs were injured by being put in irons",<sup>156</sup> the figure of Beadon achieved centrality, not his victims. The government was encompassed in a collusion with Mr Beadon as the latter was merely censured for "his indiscretion, illegal conduct and negligence".<sup>157</sup>

It was because reality was seen to reflect the fiction of the period that the cross-

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<sup>155</sup>Bangabasi, 27 Dec. 1885, no. 1, BNNR, 1885, p.12.

<sup>156</sup>Dacca Prakash, 22 Feb. 1885, no.9, BNNR 1885, p.319.

<sup>157</sup>Ibid.

over for the bhadralok from fact to fiction became relatively easy. Clothing, dieting and prison discipline were becoming central to the debate, for which knowledge about the condition of the general jail population was important. And it was here that the attitudes towards the bhadralok and the chhotolok prisoners were most marked. Thus the newspaper reports, reciting catalogues of grievances of the general prisoners, their deaths due to negligence, were impersonal about their family backgrounds, the reason for their imprisonment, and the fate of such prisoners. It is in this light that the difference between the death in prison of "Beni Madhav Ganguli"<sup>158</sup> and "one Ketab Sekh"<sup>159</sup> is viewed.

The death of a respectable Brahmin, a Ganguli, in prison involved the questioning of the whole system that had been involved in persecuting him. That he had escaped from custody, then been arrested "in a public place" and sentenced to a month's rigorous imprisonment, "regardless of his age and health" in Burdwan jail, thus became important. His brother had then tried to move the High Court on his behalf, but before the case could be heard, "the poor man was no more". This tragedy was incorporated within the middle-class discourse that put forward the image of the victimised bhadralok. The tragic element intensified when the body of Beni Madhav was initially refused to his relatives for burning by the jailer and the *naib*, and when the civil surgeon finally relented, "the body was found lying under a thatch with its doors open, one of its eyes eaten up by crows". This, too, fitted in as a part of the tyrannical penal institution - "it is needless to tell ... the wicked people of the Indian jails do not often scruple to commit the most heart-rending crimes for it".<sup>160</sup>

When Bholanath Mukherjee, who was convicted of embezzlement by the Magistrate of Howrah, and sentenced to rigorous imprisonment for twenty days also died, there was an immense amount of speculation as to the cause of his death. Whether he was starved to death, or flogged to death, or died of natural causes was a matter of discussion. The last, at least was held to be unlikely, as Mukherjee "was a strong healthy

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<sup>158</sup>Burdwan Sanjivani, 28 Jul. 1885, no. 32, BNNR, 1885.

<sup>159</sup>Surabhi, 24 Mar. 1885, no.13 ,BNNR, 1885,p.480.

<sup>160</sup>Dainik, 9 Jul. 1885, no. 28, BNNR, 1885, p.897.

man". Before the enquiry had taken place, Bangabasi had summed up the rumours that were freely circulating, combining all the paranoia of the bhadralok in a interlinked story of oppression in jails and the dilemma of the bhadralok: "The real cause of death is unknown to the public, and several stories are going round in connection with the subject. Some say that Bholanath Mukherjee, a strict Hindu, refused to take food cooked in the jail, for which he was flogged".<sup>161</sup>

On the other hand, the death of "one Ketab Shek" was never a tragedy by itself, but indispensable to building the discourse of the inhumanity of the jail officials. The doctor's certificate, that "Ketab Shek had died of a ruptured spleen", was part of the ill-treatment of the prisoners, and therefore, the whole catalogue of miseries was evoked for the location of the true cause of Ketab Sekh's death. Thus it became important to say

that the prisoners have boiled gourd, or occasionally boiled rice is given them for breakfast. Such nasty and unnutritious food is not fit for the prisoners who have to work hard ... The dress of the prisoners scarcely cover their nakedness ... Prisoners are sent in a batch to satisfy the call of nature. This destroys their sense of modesty ... There are no paid *mehters* [sweepers] in the jails. Hindu and Mussulman prisoners are employed to serve as *mehters*.<sup>162</sup>

Attention was being focused on the metropolitan jails as well as on the mofussil jails, for it was pointed out by Grambarta Prakashika that these secondary jails were "seldom visited by superior jail officials, and which are[were] situated in places which are seldom visited by the Lieutenant-Governor". Thus these jails, completely unsupervised, were open to gross mismanagement and cruelty. The prisoners, it was reported, were "not allowed sufficient food", and repeated flogging covered their backs with sores. Hard penal labour gave rise to "short work", where the jail requirement of production was not fulfilled, and the prisoners were therefore "confined in dark solitary

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<sup>161</sup>Bangabasi, 23 Jul. 1887, No. 31, BNNR, 1887, p.778.

<sup>162</sup>Surabhi, 24 Mar. 1885, No.13, BNNR, 1885, p.480.

cells and allowed in the evening food so loathsome that ... he [the prisoner] will refuse to eat it". Under such hard prison conditions, "few well-to-do men can escape illness", and they were also the primary cause of jail mortality.<sup>163</sup>

There were similar charges pouring in from all the districts of Bengal that accused many jail officials of cruelty. Rungpore Dik Prakashak<sup>164</sup> Bangabasi<sup>165</sup>, Navavibhakar,<sup>166</sup> were all engaged in the same enterprise. Som Prakash, a conservative newspaper, which felt in 1883 that the jail administration was mild, registered in 1885 a horrified protest: "Such cruelty corrupts men for ever".<sup>167</sup>

What was new at this point was the demand for public information about the jails, the right of the educated public to know what happened behind the jail walls. The Navavibhakar demanded to know "what is [was] passing in the jails ... the Jail Code that behoves such secrecy should be modified to include public intervention".<sup>168</sup> When the Jail Commission appointed after the Presidency Jail scandal confirmed the truth of the allegations, the Ananda Bazar Patrika brought to light the atrocities the jail officials practised on the prisoners.<sup>169</sup> The jails were projected as torture sites that needed to be reformed by allowing the educated middle classes to enquire into the jail administration. Until there was such a throwing open of the penal system to public scrutiny, there would be continued stories of such atrocities, as "every jail officer, from the little Warder to the big Inspector General of Jails is anxious to keep the public entirely in the dark as to what passes within the jail". The inordinate difficulty faced by the bhadralok in order to gain access to information not provided by the jail reports by bureaucratic restrictions was condemned. The fixed timing inadequate for proper superintendence, the insistence on the rigid silence to be observed with the prisoners, all contributed to maintain the secrecy

<sup>163</sup>Gramvarta Prakashika, 6 Dec. 1884, no. 49, BNNR, 1884, p.1516.

<sup>164</sup>Rungpore Dik Prakashak, 25 Dec. 1885, no.1, BNNR, 1885, p.6.

<sup>165</sup>Bangabasi, 27 Dec. 1885, no.1, BNNR, 1885, p.12.

<sup>166</sup>Navavibhakar, 29 Dec. 1885, no. 1, BNNR, 1885, p.21.

<sup>167</sup>Som Prakash, 10 Jan. 1885, no. 2, BNNR, 1885, p.60.

<sup>168</sup>Navavibhakar, 29 Dec. no. 1, 1885.p.21.

<sup>169</sup>Ananda Bazar Patrika, 5 Jan. *ibid.*, p.66.



of the jail. Thus the "secrets of the jails can only be learned from discharged prisoners and retired or dismissed jail officials. The Editors have heard of cruelties in Jails from both these classes".<sup>170</sup>

In 1894 there was official recognition of the bhadralok's concern for jail administration. It was confirmed that the enquiry came from the editors of the Amrita Bazar Patrika, Sisir Kumar Ghosh and Motilal Ghosh through the private channels of the government.<sup>171</sup> The object of the enquiry was an intention to confirm the "true causes of jail mortality which my society is strongly of the opinion is due to bad food, overwork and excessive punishment".<sup>172</sup> This was to be done by an inspection "without previous notice", of "the foodstuffs provided to the inmates, as also to see the treatment they received at the hands of the jail warders and overseers in particular, the nature of the work they were set to perform, and the punishments inflicted upon them".<sup>173</sup> S.K. Ghosh and M. Ghosh had filed the evidence given by two ex-prisoners, one of whom was identified by the government as Gopalamunda Swami, one of the *Gorakshani* society's agitators, who was imprisoned in the Buxar jail and later transferred to the Presidency Jail in Calcutta. Their sources of information were the evidence of ex-officials of the jails, and ex-prisoners, but they admitted that "they had never been inside a Jail, and that they had no personal knowledge of its working". The evidence collated from these different sources was a reiteration of the kinds of maladministration the jail administration was guilty of, but the report submitted by the editors could be said to reflect the coagulation of the discourse of the last thirty years in statements that were explicit in their demands for the extension of privileges to the bhadralok within the jail :

The Committee ... will agree with my society that the food  
supplied to the Indian prisoners is not of the quality usually eaten

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<sup>170</sup>Navavibhakar, 16 Feb., *ibid.*, 1885, p.291.

<sup>171</sup>Home Department Proceedings, Jails, 1894, Prog. Nos, 53, Index No.10,p. 243. NAI.

<sup>172</sup>D. R. Lyall, President of Jail Committee, to Chief Sec. to GOB, 6 Mar. Calcutta 1894, Home, Jails, 1894, Prog. Nos, 53, Index no.6, Forwarding a letter from Babu Hirendranath Dutta, Hony. Sec. of Indian Relief Society, to President, Jail Committee, NAI.

<sup>173</sup> Hirendranath Dutta, *ibid.*

by the upper classes of Bengalis ... My society earnestly begs the Committee to recommend that our bhadraloks maybe treated with the same consideration as "poor whites", that at least the quality of rice supplied to them maybe improved.<sup>174</sup>

This statement shows the contradiction in the consciousness of the bhadralok as a "subaltern" elite, that automatically bracketed itself with the "poor whites" in its demand for privileges. At the same time, the attempt to rise above the class-bias was framed in the liberal-humanitarian language of Jail-Darpan, which declared the importance of jails as "houses of correction", where "moral improvement of the prisoners ... so that they might be better citizens" was undertaken. In this function the Indian jails had failed, and were only "workshops to turn out the greatest quantity of work out of prisoner-machines".<sup>175</sup>

### **A Gradual Transformation in the Image of the Jail**

One strand of educated public opinion felt that the administration of the jails was efficient and mild, while another, more critical, angle penetrated beyond the official reports, to the area which the government obdurately kept hidden. The Ananda Bazar Patrika, making common cause with two other newspapers, Amrita Bazar Patrika and the Indian Daily News, attempted to uncover this side of the jail administration. There was an awareness at this point that the government could be pressured to enquire into maladministration in the jails. What was mourned was a loss of sensitivity, the acquisition of a kind of mental attitude that made collaborators of Bengalis in the manning of the punitive apparatus of the alien government. This was seen as the loss of some quality that was essentially Bengali. Thus, previously, such positions were generally manned by the rough, Hindi-speaking people, but with the gradual infiltration of the Bengali into these posts, the self-conscious, self-critical Bengali intelligentsia was aware of a new era of collaboration. Thus previously death sentences had "produced great fear and agitation", as witnessed in the "execution of Nandkumar". But now the people were indifferent to even see "a

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<sup>174</sup>H.N. Dutta, Sec., Indian Relief Society, ibid., Report, Part III.

<sup>175</sup>ibid., Part II.

person hanged". Similarly, the post of darogas had been unacceptable to "person[s] of respectability", but now there was no bhadralok aversion to the post "of the constable of police". Giving evidence in a court of law had been regarded as "sin" by the respectable classes formerly, but the debasement of the nation was reflected in the fact that "now there is hardly one who has not ... had to do so". Even the prisons reflected metaphorically the conditions of the people of Bengal: "for [like the inmates of the jails] ... the latter have no liberty".<sup>176</sup> The prisoner had the assurance of two meals a day, along with rough clothing, but did not have any luxuries, including self-respect. The bhadralok were placed in an analogous position within society, for they too were reduced to the bare minimum required for existence, and their gradual demoralisation with the loss of cultural traits were coterminous with the loss of self respect and identity. This was clearly exemplified by the compelling need to take up occupations far below their bhadralok status, just like prisoners forced to take up unclean occupations below their caste.<sup>177</sup> The last was a grievance of long-standing, and the representation of the Hindu Ranjika is a typical example: "Government says it teaches work in the jails but Brahmins would not work the oil-machines at home. Why, then, should they be obliged to work such machines [in jail]".<sup>178</sup>

Thus the backbone of the discourse in the period when the politicisation of the prison had not received wide publicity, was that the bhadralok did not survive the jail experience or if they did, it was at the cost of their health. This invested the imprisonment of the earlier political prisoners with a daring and self-sacrifice not matched by later political prisoners. Surendranath Banerjee was given a tumultuous welcome after his return from jail. The students who were imprisoned aroused a storm of protest, principally because thirty years of discourse had given the indigenous society an image of the jail that was sordid and brutal.

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<sup>176</sup>Ananda Bazar Patrika, 28 Apr. 1880, no.18, BNNR, 1880, p. 5.

<sup>177</sup>Ibid.

<sup>178</sup>Hindu Ranjika, 5 Mar. 1884, no.11, BNNR, 1884, p. 295.

## Women, Law and Prisons

Let us now turn to another sphere of silence from the bhadralok. This was the silence regarding the subject of female criminality in newspapers and the literature of the 1860s, 1870s, 1880s and 1890s, and also regarding the presence of a female jail population. Jatadharir Rojnamcha, written in 1883 by C. Bandopadhyay, perhaps partially explains this.<sup>179</sup> Reported to be "based on observation" and containing "very valuable material for the history of Bengal", the book had created certain stereotypes that were acknowledged to be based on "a habit of very careful and minute observation of all sorts of men and all sorts of things".<sup>180</sup> "The element of strength in man ... represented by Babu Ashutosh Raya", a zamindar and an authoritarian patriarch, was also supposed to be a representation "based on observation". His reaction to a police case explained this silence of the bhadralok on the issue of women's criminality. The case was the consequence of an attempt at suicide by Sona Bagdini, Raghubir Bagdi's wife, for being accused of adultery and then beaten by her husband. Ashutosh Raya stressed its unimportance: "An adulterous woman, out of a swollen ego, has attempted suicide. Is this an important matter?"<sup>181</sup>

The writers, all middle-class males, with no jail experience of their own, could not envisage female criminality being forcibly restrained in the jail. Preoccupation with feminine criminality remained generally confined to women's social transgressions, not their criminality, perceived to be tied to expressions of illegal sexuality, and therefore threatening to the fabric of society.

The official version, too, generalised about the moral "looseness" of the chhotolok women, that led to crime : "As a rule, the women who appear before the criminal courts charged with infanticide, abortion and kindred offences are widows of

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<sup>179</sup>Chandrashekhar Bandopadhyay, Gangadhar Sharma Orphe Jatadharir Rojnamcha, (first printed 1883), Calcutta, 1992.

<sup>180</sup>Vernacular Literature, Calcutta Review, No.CLVIII, 1884, pp. xxxiii - xxxiv.

<sup>181</sup>Bandopadhyay, Jatadharir Rojnamcha, p.18.

lower social status and poor circumstances ..."<sup>182</sup>

It was the lower-class connotation of such public court appearances by *chhotolok* women with regard to sexual crimes that made the courts a space that was fit only for the *chhotolok* women to inhabit. The *pardanashin bhadramahila*, occupying the pure space of the *andarmahal*, would not appear in the public that was open to all in a desecrated domain, where the most shameful of all crimes committed by women were given open utterance. This domain, therefore became the area of confrontation between the *bhadralok* and the colonial government. The requirements of the law would attempt to compel the *bhadramahila* to step out into the public space of the court, without any regard to the *pardanashin* status of the *bhadramahila*: with regard to this legal area which exempted the female population of the upper-castes, the colonial government was constantly trying to narrow the number of *pardanashin* women who through this privilege, avoided the law; while the *bhadra* classes constantly tried to claim the space for their women. The onslaught of the courts and the jails, the instruments of colonial rule, stripped the culprit of any privacy and displayed him/her publicly as a "criminal". The fear of the public gaze of a court with its associations with vulgar or intimidating questions within the deeply "traditional" *antahpur* explained the strong reaction to any attempt on the colonial government's part to drag the *bhadramahila* into open court, and subject her to the rigorously impartial colonial justice. As explored elsewhere, there was a deeply felt sense of loss at the lowering of respectability of the *bhadra* Bengali since he, regardless of caste and social background was forced into areas of occupations like the police, or was forced by circumstances into giving evidence in courts. That this loss of identity, with the accompanying moral and social degradation, should seep into the *antahpur*, was resisted by the *bhadralok*.<sup>183</sup>

Partha Chatterjee's concept of the two split domains - the material and the spiritual, which freed the Bengali in the inner space of the home, can be used to explain

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<sup>182</sup> W. Macpherson, Offg. Judge of Cuttack, to Sec. to GOB, 7 Apr. 1877, BJP, Oct. 1876, p.123, WBSA.

<sup>183</sup> Bandopadhyay, *Jatadharir Rojanamcha*, especially the different treatment accorded to Sundari Gopini and the daughter of the zamindar, Kadambini.

this silence about the female criminal, who did not belong to this sacred area.<sup>184</sup> However, the limitation of the *bhadralok*, which failed to look at the *chhotolok* women when they came under the operation of the law, is reflected in Partha Chatterjee's argument as well. Thus the women belonging to the *chhotolok* classes, who were treated as criminals in open court, did not threaten the identity of the "free interior" inhabited by the *bhadramahila*, as their non-conformity to the image of the *purdahnashin* woman symbolising the uncolonised interior was too wide to be bridged. Chatterjee's argument does not bridge it either.

Hence the crimes of abortion and infanticide, crimes tied up with the feared visible consequences of unbridled female sexuality gone astray, were closely linked with murders, with secrecy that kept the interior of the *bhadralok* household from appearing in public, where *aabroo* or veil could not be protected. It is in this context, then, that the *bhadralok*'s horror of the courts and the jails regarding the women's public appearances in this space will be examined, which made the 1920s, when the women went to jails as well, all the more remarkable. It is in this light that the imprisonment of a Hindu lady had to be seen.

It was in the 1880s, the period of the Ilbert Bill, the jailing of Surendranath Banerjee and other political and ideological developments, that the early instances of the *bhadramahila* being harassed in courts were publicly denounced. Mr. Grant, the Sessions Judge of Hooghly perpetrated a shocking act of "high-handedness" on a Brahmin woman in the witness-box, whose husband, Shyama Charan Chakraborty was being tried in the Sessions on a charge of homicide, committed in a fit of insanity. The *bhadralok* were horrified at this forcible unveiling of a *bhadramahila* in open court upon an order from the judge, who considered her deposition insufficient. Amidst great condemnation of the incident, the focal point of protest was that "not one pleader ... before whose eyes this horrible incident took place had the courage to prevent or protest

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<sup>184</sup>Partha Chatterjee, *The Nation and its Fragments: Colonial and Post-colonial Histories*, Princeton, 1993, pp. 116-57.

against it".<sup>185</sup> Thus the "unveiling [of] a modest and respectable female by force before the court ... in the presence of about a dozen persons who are all gentlemen of ability, a Brahmin woman was thus allowed to be touched by a stranger - nay - a Mahommedan" was seen to threaten the Hindu identity itself.<sup>186</sup> Therefore the "Hindu society" was perceived to groan "at the weight of this intolerable humiliation", while Mr. Grant was asked to explain "this serious outrage upon a Hindu woman".<sup>187</sup>

In 1883, a similar incident in court violated the sanctity of the *purdah* by "the forcible removal of the veil of a Brahman lady, aged about 14-15, who was present in the Judge's court at Midnapore as a witness" in a murder case. The event was first publicised by Medini,<sup>188</sup> a Midnapore paper, and the incident really gripped the popular mind as it touched upon its deepest fears. This reaction of a society besieged was discernible in the panicky overtones of the protest of the middle-classes. There was a demand that the judge should be punished "... by whose orders the insult was thus offered to a respectable Hindu lady".<sup>189</sup>

The Medini then gave details of the case and described how force was used on the girl, that proved to all that the Hindu identity was being threatened because of the threat to the *purdahnashin* woman in court. The girl, even though she had "resisted the attempt of the clerk for some time", had been unveiled, and intensely distressed, "she [had begun] to tremble, and drops of perspiration appeared on her face and body and while about to fall down senseless, she was caught by the pleader". A repeat performance of the entire sequence the next day convinced the bhadralok that "the fact of her mental disquietude was not, as the Judge says, from her connection with a murder case, but from forcible unveiling".<sup>190</sup>

To a girl of fourteen, the response to a novel, terrifying experience, specially

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<sup>185</sup>Sadharani, 12 Jan. 1880, No. 6, BNNR, 1880, pp.6-8.

<sup>186</sup>Choudhury Sengupta, "Colonialism and Cultural Identity", Ph.D., thesis for the formative years of the identity of Hindutva, pp. 304-309.

<sup>187</sup>Sadharani, pp.6-8.

<sup>188</sup>Medini, 12 Feb. 1883, no. 7, BNNR, 1883, p. 71.

<sup>189</sup>Bangabasi, 17.Feb. 1883, no. 8, BNNR, 1883, p.78.

<sup>190</sup>Medini, 17 Mar. 1883, no. 12, BNNR, 1883, p.114.

given the context of the indigenous society's tendency to avoid the courts, and its stress on veiling, was understandable. But the girl's individual reaction had a strong effect on the middle-class opinion. There was a deep distrust of the alien legal system that could subject a Hindu woman of a high caste and a member of the closely guarded *antahpur*, to the humiliation of being unveiled in public. Medini's highlighting another such instance of the pulling about of Brahmin women by the police and the courts demonstrated that the *antahpur* was becoming a symbol, a rallying point of the indigenous society. Thus the instance of a Brahmin widow, suspected of an illicit connection with a murdered man, was examined for pregnancy by the police. Her father, Chandramohan Chakraborty, was thought to be the murderer of his daughter's lover to prevent the relationship from advancing further. The Sessions Judge of Midnapur dismissed the case against the defendants, but the attempt to legally penetrate to the *antahpur*, was resisted by the *bhadralok*. Therefore, it was felt that the confirmation of the Brahmin widow's pregnancy "might have been ascertained by waiting until the symptoms became more pronounced in their character ... instead of thus illegally and quite needlessly outraging the modesty of a Hindu female". The spreading rumour "that she was, unknown to the medical officer, detained in the hospital for three or four days even after the medical examination was over", made the matter graver. Thus the "whole Hindu society [was] grossly scandalised by such proceedings"<sup>191</sup> and there was even a drama written on the lines of "the recent disgusting case".<sup>192</sup>

There was thus a strongly negative attitude towards the presence of "respectable Hindu women" in the courts, even as witnesses. Any police handling of a respectable woman was subjected to the closest scrutiny that revealed the *antahpur* as an integral part of the indigenous *bhadralok* society. Thus, an infringement of the private domain resulted in the society closing ranks against the invading legal and penal institutions. Viewed in this context, the imprisonment of the respectable Hindu *bhadramahila* was an

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<sup>191</sup>Medini, 24 March, 1880, No. 14, BNNR, 1880, p.5.

<sup>192</sup>Anonymous, Great Barber's Drama, or Napiteswar Nataka, Benimadhav Mallick, n.d., pp.27-29, 45-46.



unmitigated calamity.

The colonial judicial officers pointed out relevantly that in 1868, there had been a full Bench of the High Court appointed, which had decided to commit *purdah nashin* women, because otherwise "*benamee* transactions" were becoming impossible to prevent. At that point this ruling had attracted no notice at all:

so little was the ruling of the full Bench considered as inflicting any practical grievance ... that when it was embodied in Section 640 of the Amendment Code, it did not ... attract the attention of the Native community, and as admitted by the British Indian Association, escaped their notice ...<sup>193</sup>

In the light of this indifference of the most aware political body in the late 1860s, the Hindoo Patriot's protest against the "arrest of zenana ladies", with regard to the committal of Hurromonee Debi [Horomoni Debi] to the Diwani Jail, in the execution of a decree, seemed to the colonial government irrelevant.<sup>194</sup> However, the protest of the Hindoo Patriot with regard to such arrests made the colonial government reassess the provisions made for the special treatment of the "respectable Hindu ladies". Thus, there was a separate provision made, "with the view of obviating the inconvenience suggested by the Committee of the British Indian Association for the detention of the women of respectability in a common jail, the Lieutenant Governor will arrange with the Inspector General of Jails for providing proper accommodation in the Civil Ward at the Russa Jail for such cases".<sup>195</sup>

Thus, unobserved by the middle-class, the colonial administration had partially removed the wall that separated the *andarmahal* from the external world, which involved court presences, imprisonment in jails and other public indignities. However, there was something significant in the 1868 Bill passing unnoticed, yet a decade and a half later,

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<sup>193</sup>Horace A. Cockerell, Sec. to GOB, Judicial, Political and Appointment Department, to officiating Sec. to GOI, nos. 15 Oct. 1881, no. 173, Home Judicial, Nov. 1881, 167-180, NAI.

<sup>194</sup>F.C.Daukes, Under Sec. to GOI, to the Solicitor to the GOI, 20 Apr. 1881, Home Judicial, Nov., 1881, nos. 167-180, NAI.

<sup>195</sup>Horace A. Cockerell, Sec. to GOB, Judicial, Political and Appointment Department, 15 Oct., 1881, 173, Home Judicial, Nov. 1881, NAI.

there were protests against this proposed invasion of the inner space. This was not only because a woman of a respectable family had been imprisoned, though of course there was this element of an illustration before the middle-class society of the actual imprisonment of a respected member of the *antahpur* but the evolving discourse of the last two decades, which had been built around the jails and the courts had triggered this response. In the 1870s, because there had been no "respectable lady" who was arrested, there had been no suspicion of the threat the legal and penal apparatus could pose to the guarded interior.

There were, as mentioned before, women "criminals", guilty of sexual transgressions, but because they were far removed from the image of the inhabitants of the "antahpur", their trials or sentences of imprisonment could not stir up the *bhadralok*. To reverse the argument, it was for the control of such feminine criminality that the jails and the criminal courts had an utility value, and therefore had the sanction and consent of the *bhadralok*. Secondly, it was for the purpose of holding up the image of these "loose" and "fallen" women, who ended up in the courts and the jails, to deter the members of the *antahpur* to follow in their footsteps. It was the prototype of the "loose" women who were reproduced *ad infinitum* in Bengali literature to serve as a warning to potential transgressors of social injunctions - Padi Mairani in Neel-Darpan, Bakna Piyari, in Sachitra Guljar Nagar, the stepmother of Alokeshi and the low-caste woman who sold Alokeshi to the Mohanto of Tarakeshwar, in most of the Mohanto-Alokeshi plays, to mention just a few.

But the early 1880s brought about a change, as the women from respectable families were pulled about in courts as witnesses, their veils removed, thereby arousing in the indigenous society strong resentment. The British Indian Association responded negatively to the threatened invasion of the *antahpur* by way of arrest, commitment to trial and the threat of imprisonment. There was even a common cause made with the Muslims, for both the cultures perceived the sanctity of the *zenana* as being intrinsic to their religions for "the *zenana* [was] an established institution in this country", and was "held sacred to both Hindus and Muhammedans". Therefore, "nothing could be more

revolting to their dearly cherished feelings than to invade its sanctity". Thus, when "a *pardahnashin* lady out of the zenana" was jailed "under colour of the law", she was "exposed to the public gaze, ... her religious feelings ... necessarily compromised, and ... her modesty and self-respect" destroyed. It was therefore "the greatest insult offered to Native feeling on the subject, and the greatest wrong that could be done to native society".<sup>196</sup>

There was, then, a subtle yet distinct differentiation made within the middle-class society, by way of omitting any woman who was not *pardahnashin*, and thereby implying that the colonial legal and penal system could be operable on other women not within the *pardah*. By using the term, "sanctity of the *pardah*", the *bhadralok*, at one stroke took the *antahpur* out of the reach of the legal and penal apparatus, and laid bare the area where the women were not within the protection of the *pardah*, and could be, with impunity, be "reformed and corrected". Thus, just the absence of the protection of the *pardah* was enough to take them out of the definition of the British Indian Association, and hold them out as eligible candidates for the full application of the "rule of law". The *antahpur* women were considered a world removed from the women who habitually filled the jails:

In some of the cases which have lately occurred the Committee are informed, the ladies arrested were, from want of better accommodation, taken to the criminal Jail at Russa, where they were made to herd with criminals and prostitutes, detrimental alike to feelings of modesty and delicacy and to morals.<sup>197</sup>

The female jail population were considered so base that they were considered capable of ruining the "modesty" and "morals" of the *bhadramahila*. The arrest of *pardahnashin* women by strange men, being touched by them in the process, would make the women "impure", the inevitable consequence of being kept in custody. This apprehension of the

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<sup>196</sup>Kristo Dass Pal, Sec. to British Indian Association, to Sec. of GOB, Judicial, Calcutta, 28 June, 1881, L. No. 10, 167-180, Home Judicial, A, Nov., 1881, NAI.

<sup>197</sup>Ibid.

"exterior" sully the unblemished purity of the "interior" by the contaminating touch of the strange men, of prostitutes and women criminals were the deeply felt fears of the custodians of the *antahpur*, the *bhadralok*. Therefore, even though "Jail accommodation can be improved, but the necessity of arrest and custody by males cannot be obviated". The "joint-undivided family" structure, heightened the hardships by turning a legal process against one lady "within the *zenana*" into a shared experience that led "to the exposure and disgrace of other ladies in the *zenana*- a result which cannot but be most revolting to Indian feeling".<sup>198</sup>

This view of the "Native" society, interestingly, was not contested by the colonial government. There was a certain amount of acceptance of the exclusiveness of a certain section of the women who were in the *purdah*. The contested area was the redefinition of the women who would be counted as the *purdah-nashin*, and who would not be considered as such by the colonial rule. The division was drawn along *bhadralok-chhotolok* lines, with the behavioural pattern of each basic social division being sharply etched according to the specified customs of the higher castes/classes. Thus the colonial government tried to limit the kind of women who could lay claim to the status of being a *purdah-nashin*, and claim the privileges given to that section. This attempt proved to be a thorny issue: "In nine cases out of ten, the women who worry the courts with claims to special treatment on the ground of being *purdah-nashin* have not the least title to be deemed such".<sup>199</sup>

The official view-point therefore used as the criteria of selection of the true *pardah-nashin*, the complete concealment of the women in their own society as well as in the public view, no vulgarly loud voices, completely covered, and belonging to good families of high caste. Any other category abused the concept of the *purdahnashin*, and such women were therefore merely guilty of obstructing court procedures:

They are women who maybe seen in a state of practical nudity

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<sup>198</sup>Ibid.

<sup>199</sup> T. T. Allen, Offg . Superintendant and Remembrancer of Legal Affairs, to Sec. to GOB, 31 Aug., 1881, Home Judicial , Nov. 1881, NAI.

bathing along the banks of rivers, and who run about their villages without the least pretence of concealment. To such an extent has the abuse gone that even the female relations of chuprussees and common constables, whose voices may be heard loud at the *hat* [weekly market] or *bazar* [market], object to appearance in court as being *purdah-nashin*.<sup>200</sup>

There were thus claims and counter-claims on the official side and on the side of the bhadralok to claim the *antahpur* to be rigidly *purdah-nashin*. This is the crux of Girish Ghosh's melodramas that revolved around women characters: they had low voices, were completely covered, and incapable of exchanging a word with a stranger, or with an European official even from behind the door, scared and bewildered at the prospect of setting a foot outside the door.<sup>201</sup> In *Surendra-Binodini Nataka*, a *bhadramahila*, framed in a theft-case, could not say a word in her defence, but could only say to herself, after the fashion of Sita, "Mother Earth, open up! I cannot bear this anymore!" A bhadralok voiced her denial: "She is dying of shame, how can she answer? Is it possible that she has committed theft?"<sup>202</sup> These categories, generated from within the indigenous society, were reinforced by the official view and were replicated and reified by other families aspiring to be *bhadra*.

These questions had therefore come into play, and had formed the subject of discussions over the early years of the 1880s. Thus, when the Rani of Puntia, Ramkisoni Devi, daughter of Shyama Sundari Devi, was "imprisoned for an offence relating to her estate",<sup>203</sup> the discourse regarding the imprisonment of respectable women that had been generated over a space of five years, burst into full eloquence. The degree of punishment was attempted to be measured by quantifiable examples that would convey the enormity of the sentence of imprisonment on one of the revered zamindars in Bengal: "The

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<sup>200</sup>*Ibid.*

<sup>201</sup>See Girishchandra Ghosh, *Girish Rachanabali*, "Prafulla", pp.85-208, or "Balidaan", pp.333-472, to come to a conclusion about the lower middle-class *purdah-nashin*.

<sup>202</sup>Anonymous, *Surendra-Binodini Nataka*, pp.41-42.

<sup>203</sup>*Bangabasi*, 1 Aug. 1885, no. 32, BNNR, 1885, p.1009.

imprisonment of a lady of respectable family is considered in this country a much more serious punishment than the capital punishment of an ordinary man".<sup>204</sup> The humiliation collectively experienced by the bhadralok when a female member of a Brahmin zamindar family was jailed was expressed by the Ananda Bazar Patrika, :

This news will ... cause deep pain to the people of Bengal. The Putea [sic] Raj family is one of the oldest and most respectable families of Brahman zemindars in Bengal, and this fact, coupled with the consideration that the imprisoned Ram Kisori Devi is a female, will intensify their regret.<sup>205</sup>

Other newspapers like the Surabhi<sup>206</sup> also openly condemned such inhumanity, since the sentence transgressed the most cherished space, the *antahpur*. Utkal Darpan, examining the imprisonment of the Rani on grounds of forging a document, interpreted the cause of her imprisonment as immaterial. Firstly, she could not be responsible for the crime, as she possibly could not have control over her own estate, but must have been completely guided by her advisors, as "she was only a puradanishee[sic] Hindu lady ... Hindu ladies, specially in the higher ranks of society are not allowed to lead a life of independence, and they are taught from their infancy obedience and submission ..."<sup>207</sup> Secondly, if she was responsible for the crime, it still did not justify her imprisonment as she had "a position in society, perhaps second to none in Bengal. Her incarceration will be taken as a national disgrace - a humiliation for the whole country ..."<sup>208</sup> It was felt that the honour of the nation had been compromised by the Sessions Judge of Benaras, as he had imprisoned a lady of great importance from the zenana in the indigenous society. This sentence represented the total humiliation of the nation, as for the first time in the 700 years of slavery of the Bengali, "a Hindu female has lost honour. The Hindus prize the honour of their zenana above all things. But if that honour is interfered with by the

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<sup>204</sup>Ibid.

<sup>205</sup>Ananda Bazar Patrika, 3 Aug. 1885, no. 32, BNNR, 1885, p.1019.

<sup>206</sup>Surabhi, 4 Aug. 1885, no. 32, BNNR, 1885, p. 1019.

<sup>207</sup>Utkal Darpan, 21 Aug. 1885, no. 34, BNNR 1885, p.1089.

<sup>208</sup>Ibid., p.1089.

English system of administration of justice, the Hindus feel themselves to be exceedingly disappointed and humiliated".<sup>209</sup> This angle represented the declaration of the *bhadralok* to be free of slavery as the "honour" of the *antahpur* had never been compromised.

The Rani was reproached for having failed to preserve the "national honour" and to carry the weight of the "uncolonised interior", for which her own person was a repository, and therefore within her own power to protect. Thus the *Utkal Darpan* that had denied the Rani any autonomy where her own estates were concerned, felt contradictorily that she should have asserted her autonomy, and destroyed herself, as her sense of pride should have revolted at the thought of being tried and jailed, before she could compromise the national honour:

For one to have simply appear before Court is a punishment, which [was] equivalent to the imprisonment of another, ... the imprisonment of Ramkissori Devi, means many deaths to her. A friend was telling us that the lady should have bought ... opium and swallowed it, and ... that would have been an act of a Hindu lady.<sup>210</sup>

This interpretation of a Hindu lady was a world removed from the *chhotolok* women criminals who were given a no-history status by a primarily middle-class male discourse, who had converted them successfully into "the other", and had posed them as the antithesis of the women of the *antahpur*, with whom even contact contaminated the "protected women".<sup>211</sup> The fate of this low-caste criminal woman remained a matter of indifference to both the official and the *bhadralok* alike, and her history was not examined, only her crime. Such indifference was demonstrated in the capital sentence imposed on a female convict, Roopbansie, guilty of killing her husband with poison. In her petition, she pleaded for clemency, as being a woman, there was a lot of essential

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<sup>209</sup>*Bangabasi*, 29 Sept. 1885, No. 36, BNNR, 1885, p.1129.

<sup>210</sup>*Utkal Darpan*, 21 Aug. 1885, No. 34, 1885, p.1089.

<sup>211</sup>Rabindranath Tagore, "Beecharak" *Galpaguchha*. A respectable young man had eloped under an alias with a young widow, promising marriage. Later a judge of the High Court, he sentenced a prostitute to death. On a jail visit, he realised she was his discarded mistress, and still held his false name dear.

information she was unaware of, and therefore did not know that the powder would kill her husband. She was not guilty of a crime, though she might be guilty of irresponsibility, adultery and ignorance:

I'm a woman ... I don't recognise poison ... I was taught by him [presumably her lover] to give it to my husband [in his food]. Dharmavatar [literally reincarnation of justice] I didn't do so knowingly. Dharmavatar, I'm a pregnant woman, it is irreligious to sentence me capitally: moreover in the previous case a woman's life was spared, ... as she was pregnant she [was] ... given life imprisonment. Therefore let the order of the capital sentence on me be revoked.<sup>212</sup>

When William Grey, in response to this appeal, asked for the particulars of the woman and inquired for the chances of Roopbansie being regarded as "a fit object of mercy",<sup>213</sup> T.R. Buckland, the Registrar of the Nizamut Adalat, gave a firm negative, for she had "treacherously murdered" her husband so "that she might carry on an intrigue with her paramour and associate in the murder, Sheikh Kalayi, who had already suffered the penalties of the crime".<sup>214</sup> There was, therefore, no leniency for Roopbansie. Forty days after the birth of her child, she was hanged. The government, parallel with the bhadralok, considered such crimes by women to be "heinous" and against the fibre of femininity and the mores of society, and had a hard attitude towards them in court. Tagore's Bicharak (The Judge) could therefore stand in for both the attitudes, as evinced by the English judges and the Bengali bhadralok. If the woman was seen to be "harmless", without the power of subverting social injunctions, the administration could be lenient. This was demonstrated in the case of a woman called Mussmt. Ayah, convicted of petty theft, but released on the grounds of insanity. The colonial

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<sup>212</sup> Petition from Roopbansie to the Lieutenant-Governor, s.nos. 73 & 74, Backergunge Jail, 14 Dec., 1854, BJP, 1854, IOL.

<sup>213</sup> W. Grey, Sec. to GOB, to Registrar of Nizamut Adalat, T.R. Buckland, 10 Oct., 1854, s.no. 74, L. no. 2204, 14 Dec., 1854, BJP, 1854, IOL.

<sup>214</sup> Registrar of Nizamut Adalat, T.R. Buckland, to Sec. to GOB, 10 Oct., 1854, s.no. 75, L.no. 913, 14 Dec., 1854, BJP, 1854, IOL.



government, at this juncture, felt responsible for her state of health, as she was pregnant. "The woman is perfectly harmless, and had she any friends to take care of her, it would not have been necessary for me to trouble the government but ... there is a special reason for her being placed in safety somewhere as ... she is some months gone with child".<sup>215</sup> Thus there are strong indications that the colonial government, as far as was practicable, upheld the patriarchal structure of the Bengali society.

### **The Later Phase**

The bhadralok were excited when the *pardahnashin* women showed themselves to be capable of "nationalism". The images of the past, like Mira Bai, Chand Bibi of Ahmednagar, the Rani of Jhansi, Rani Bhabani of Natore, and other notable widowed women zamindars such as Rani Swarnamayi of Kasimbazar, were drawn upon, as the present generation of women were disappointingly uninspiring for the bhadralok. It was during the Swadeshi movement that the numerous press prosecutions revealed to the bhadralok a slight movement behind the purdah. The donation of gold ornaments were extolled, quantifiable in a "gold bangle" sent in by "Sreemati Nitombini Devi, the wife of Sreejut Jaminikanto Ganguly, an inhabitant of Manpasa, a village in the district of Barisal, ... to help Srijuktas Durga Mohan Sen and Ashutosh Bagchi, Editor and Printer of our paper", and a "nose-ring for the same purpose" given by "Srimati Sarojini Dutta of Panihati, a girl of eight years". The valorous woman was seen in "the wife of Srijut Durga Mohan Sen", who "addressed a stirring letter to her husband encouraging him not to shrink back from the horrors of the jail then before him". These actions, hinting at the presence and participation of women "shed a halo of glory", and spelt reassurance "to a nation as fallen as ours".<sup>216</sup>

Despite this perceived participation, the women in this phase of the nationalist movement still clung to the identity of the *pardah-nashin*, as seen in the case of Sarojini

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<sup>215</sup> Magistrate of Tipperah, Comillah, to the Secretary, GOB, 11 Aug., 1854, s.no. 116, L. no. 304, 24 August, 1854, BJP 1854.

<sup>216</sup> Bande Mataram, 27 Feb., Thursday, No. 64, 1908, p.1.

Ghosh, the sister of Aurobindo, as she refused to depose in a court of law in 1908, by claiming status as a member of the *andarmahal*, and therefore beyond the zone of the public colonial law.<sup>217</sup> Later, in 1921-22 and 1932-33 and during the Quit India movement in 1942, this changed. The memoirs and diaries of middle class women prisoners, like Rani Chanda's Jenana Phataka<sup>218</sup> and Kalyani Bhattacharya's Jeeban Adhyaan,<sup>219</sup> showed the involvement of the women. For the first time, too, the women criminals examined at close quarters by middle-class women, were found to be ordinary women, underprivileged and affectionate, who had found their way into the prison through many personal tragedies. But this thesis does not include this later period.

The 1890s ushered in a period of a feeling of cohesiveness: the Bengali middle-class intellectuals drew on the experiences of the other provinces. Thus the humiliation and sufferings of Tilak and other political leaders' in courts and jails became examples of British high-handedness, and as such, drew the attention and condemnation of the *bhadralok*. By the 1900s the province of Bengal had a full exposure to the sentences of "honourable imprisonments" passed in colonial courts, and had grown to be sceptical of the "justice" of the colonial administration. It is in this light that the next chapter will look at the trials of B.C. Pal, and those conducted over the Alipore Bomb case, the Maniktala Bomb case, and the trial of the *bhadralok* as political "criminals".

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<sup>217</sup>Bande Mataram, 10 Sep. 1908.

<sup>218</sup>Karasahtya, p.72.

<sup>219</sup>Ibid. p.75.

## Chapter Five

### Prison, Law and Literature

This chapter will analyse the growth of the middle-class consciousness about jails, the life of the prisoners, and courts. From the general conviction that only the chhotolok went to the jail, because of a natural propensity towards crime, the bhadralok acknowledged or perhaps had to come to terms with the possibility that they were also liable to be imprisoned. As their experience of the jails grew, the concern with prison conditions grew apace. Demands for the amelioration of the lot of the prisoners and jail conditions became a running sore in government and middle-class relations, together with the perceived injustice in the criminal courts of law, which put the bhadralok behind the bars. The purpose of this chapter is to trace through literary sources the gradual evolution of the image of the jail from a grim, evil place where no bhadralok would willingly go, the residence of thieves, robbers and cut-throats, to the jails of the nationalist era, where imprisonment was like a badge of honour.

#### A Literary Overview

The Bengali bhadralok's engagement with the spectacle and experience of the jail and the courts was woven around certain themes that recurred in almost all the literature of this genre. Although these themes were intermeshed to form the integrated whole of the bhadralok's perception of the legal and penal network criss-crossing indigenous society, there will be an attempt here to separate the different issues that were dealt with in literature.

The colonial jail emerged as an evil, closed space that spelt the deepest disgrace and inexpressible physical and mental hardship to the bhadralok in one of the earliest description of the prison in Dinabandhu Mitra's play, Neele-Darpan. This analysis looks beyond the

indigo agitation, to the attitude held by the middle classes in the 1860s towards the legal and penal institutions. There were no harrowing descriptions of the interior of the jail, possibly indicating the bhadralok's unfamiliarity with it. The image of the jail, as it gained ground amongst the bhadralok as the one place that had to be avoided at all costs, took on a grim aspect, specially as going there did not seem to depend any longer on crimes which the Bengali code of morality deemed as criminal. The horror of the jail experience was conveyed through the shocked reactions exhibited by the bhadralok at the prospect of a jail sentence. The play depicted the impoverishment of a rich landowner, Golakchandra Basu, of Swarapur, because of the extortions of the owners of the indigo factory, or *neel-kuthi*, Rogue and Wood.<sup>1</sup> Golakchandra's two sons, the elder, Nobinmadhab or respectfully called *borobabu* and the younger, Bindumadhab (still a student in Indrapur), tried to avert the calamity. Nobinmadhab, was specially active in order to prevent their father's imprisonment, but because of the machinations of the Bengali (Kayesth) *amin* of the factory, his efforts were unsuccessful. The *dewan* had intrigued with the planter and involved Golakchandra in a false criminal case. Nabinmadhab found himself helpless, as the planter and the *dewan* had forced ryots to bear false witness. Both the brothers, Nobinmadhab and Bindumadhab,<sup>2</sup> were aware, prior to the *faujdari* trial, of its effect, with its threat of a prison sentence, on Golakchandra, their "simple, meek ..., peace-loving father", who "shivered at the very name of *faujdari*", and who, "if ever imprisoned, would surely drown himself". When the fear of imprisonment became a reality, the brothers' conversation brought forth the image of a helpless old man, crushed by humiliation and shame. They, too, felt the humiliation and ignominy of the sentence, and Nobinmadhab declared that he would spare no expense, to the extent of selling their house, to get Golak out of the prison.<sup>3</sup>

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<sup>1</sup> Dinabandhu Mitra, *Neel Darpan*, Tr. Amiya Rao and B.G. Rao, *The Blue Devil: Indigo and Colonial Bengal*, Delhi, ↵

1992, pp.186-87, 213, 219-20, 194-95, 216-17, 231-32.

<sup>2</sup> *Ibid.*, p.209.

<sup>3</sup> *Ibid.*, pp.235-36.

The wretched condition of Golak in the Indrapur prison was a statement of the attitude of the middle classes towards the disgrace involved in a jail sentence. Golak had refused all food continuously for three days, and all his sons' pleadings had not made him change his mind, for he considered himself irredeemably dishonoured. Even though Bindumadhab was prepared to spend his days and nights at the prison, Golak refused to be comforted. Bindumadhab's concern about his father's determined fast in the jail, and his description of his father's reaction to the prison sentence revealed the depths to which Golak thought he had sunk.

The moment that planter's slave, that ... magistrate, passed the cruel order sentencing him to jail, he put his hands up to his eyes, and they are still there - wet with tears ... he's like a dead bird inside this cage of the jail. It's the fourth day today, somehow I must see he eats something.<sup>4</sup>

Despite the jail officials' leniency towards this *bhadralok* inmate, for the jail-*darogah* was willing to allow Golak a Brahmin cook in the jail, without the added incentive of a bribe, and the deputy inspector inquired about the steps taken by the two brothers to have their father released from the jail, while the friends of the family were genuinely concerned, Golak committed suicide by hanging himself in the prison.<sup>5</sup> The jail doctor, too, sympathised with the afflicted family, but the jail regulations had to be observed: the body had to be cut down, and examined medically, though a post-mortem was not mentioned.

Gopinath, the *amin* of the *kuthi*, being a Bengali, was aware of the horror the jails produced in the minds of the respectable. At the conclusion of the conspiracy, before the trial, he was triumphant at the brilliant move he had made to contain Nobinmadhab's opposition to the *kuthi*. He declared: "I ... knew Golak Basu was a timid man, if we could drag him to court, he'd lose his mind. And the way Nabin Basu worships his father, he too will have learnt a lesson; that's why I suggested the old man should be named as accused

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<sup>4</sup>*Ibid.*, p.236.

<sup>5</sup>*Ibid.*, p.238-39.

..."<sup>6</sup> Later on, he informed the planter that Golak Basu's suicide in the unclean confines of a jail was a matter of the deepest disgrace as "among the Hindus suicide by hanging, specially inside a jail is particularly heinous. It's a great punishment for them".<sup>7</sup> The depth of this prejudice can be observed when Nobinmadhab reacted violently to the planter's taunt: "Thy father has hanged himself like thieves and dacoits do, inside a foreigner's jail; for his funeral several bulls have to be butchered, keep the money for that".<sup>8</sup> Nobinmadhab assaulted the planter at the insult, and in the process got mortally wounded and died later.<sup>9</sup>

There was also a bond of sympathy and shared experience, previously unnoticed, between the bhadralok and the chhotolok when it came to the burden of the courts and jails upon them. It is interesting to note in Neel Darpan that the effects of legal and penal persecution upon the two levels of society were depicted as diametrically opposite. The play revealed the propertied rural elite being as hard-hit as the peasantry. The play also reflected the author's class bias when it portrayed the helplessness of the bhadralok in the face of constant inroads into their position and prestige. This happened at various levels: by the *pyada* (constable) who used to catch anyone, regardless of position, even *barobabu*, and drag them to the *kuthi*. This was demonstrated by Golakchandra when he said Nobinmadhab had no other choice but to go to the *kuthi* as he had been taken there by *pyadas*.<sup>10</sup> For a ryot, this was seen as a way of life, but for a member of the bhadralok this was an insult, with no hopes of redressal.

Nobinmadhab's knowledge of the law, as an educated bhadralok, was a perceived threat to the indigo-planter. Nobinmadhab had taken recourse to the law successfully in a previous instance, to the discomfiture of the planter, as was revealed from a conversation

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<sup>6</sup>Ibid., p.217.

<sup>7</sup>Ibid., p.244.

<sup>8</sup>Ibid., p.249.

<sup>9</sup>Ibid., p.263.

<sup>10</sup>Ibid., p.186.

between Wood, the planter and Gopinath, the *amin* (bailiff). This constituted the main threat to the indigo planter's position in the countryside, as Nobinmadhab had brought home "the burning of Palashpur" to the planter, and also gave the *ukils* (lawyers) and *mukhtars* (lawyers practicing in lower courts) good counsel on the strength of which "the court decided against us [the *kuthi*]" . Also by "the old manager had been jailed for two years".<sup>11</sup> That education brought awareness of the complex legal procedure is also seen to be a threat to the position of the planter, can also be perceived in the planter's dislike of educated ryots like Sadhucharan.<sup>12</sup>

Again it was commonly known that the fear of the *faujdari* was intense amongst the bhadralok. The *amin's* plan to render Nobinmadhab completely harmless and immobile by involving his father in a *faujdari* was successful. But even though he inveighed against the system, and tried to get money for his father's bail, knowing how terrified and bewildered Golak was, Nobin's faith in colonial law remained unshaken:

What a cruel law they have passed! But why blame the law or the law-makers - if only the administrators of the law had been impartial, there wouldn't have been so much suffering! ... How many innocent people are in jail today, crying their hearts out the prison ... There are a few magistrates who are just, and in their hands this law has not become a death-warrant...<sup>13</sup>

Golak's wife reflected the opinion of the women-folk of a rich land-owning family. The complete humiliation of being sentenced in a *faujdari* case, and being sent to the jail was explicit in the way she received the news of her husband's impending trial in the *faujdari* court of Indrapur. " Ah my misfortune ... my *karta's* [head of the household, literally doer] ... a home-bird ... today that man has been summoned to a criminal court ... he might be sent to jail ... he can't sleep unless the room is spacious, he eats only the sun-dried rice, ...

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<sup>11</sup> *Ibid.*, p.191.

<sup>12</sup> *Ibid.*, pp.192-93.

<sup>13</sup> *Ibid.*, p.222.

that too cooked by his *baro-bouma* [elder daughter-in-law]; when the news came he began to beat his breast so hard that blood oozed out, and his eyes swelled with tears". Golak's lament of leaving home for his *ganga-jatra* (a ritual of taking a dying person to the river Ganges for the free passage of the soul to heaven) seemed ominous to his wife.<sup>14</sup>

At the same time, the play suggests that there was a great deal of popular awareness of the misuse of the penal and legal system amongst the ryots. Though removed from the bhadralok discourse, there was still an awareness of the issues the bhadralok was discussing, as was plain from the conversation between the peasants.<sup>15</sup> (In Hutom Pyanchar Naksha, the editor, Arun Nag recovered one such song that recaptured the despair of the times: "The blue monkeys have destroyed our golden Bengal. Harish died before his time, Long was sent to prison ... The clear writing has been reversed, by the Judge Saheb".<sup>16</sup>)

Gopinath, to justify his worth to the planter, declared the crimes he could stoop to without compunction - without feeling fear, shame, or loss of self-respect. The most abominable crimes in the Hindu lexicon - "killing a cow, a woman, a Brahmin and burning down houses" were normal things for him, and even a "jail term looming over his head" did not scare him.<sup>17</sup> But at the bottom of this list, perhaps there was a secret shame at his role in bringing such misery to his own people, while he himself always remained aware of his own dispensibility to the planter. This insecurity was rooted in his knowledge that the previous *amin* had gone to jail, while Wood had got off scot-free. With the death of Golak and Nobin, the *amin* was worried about his own skin and the probability of a just judge coming to the district with sympathy for the hapless ryots.<sup>18</sup>

For Wood and Rogue there were no such inner contradictions. They were interested

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<sup>14</sup>Ibid., pp.228-29.

<sup>15</sup>Ibid., pp.203-06.

<sup>16</sup>Kali Prasanna Sinha, Hutom Pyanchar Naksha, Calcutta, 1863, see footnote no. 434, a song by Bidyabhumi, p.168.

<sup>17</sup>Rao, Blue Devil, p.192.

<sup>18</sup>Ibid., p.244.



in the courts and jails as instruments of their own oppression. Confident of his influence with the magistrate who was his accomplice, Wood could threaten Nobinmadhab: "This not Amarnagar's magistrate you run to him, complain and planter's men sent to jail. This now Indrabad's magistrate".<sup>19</sup> And with truth, for when Golakchandra was put on trial, Wood and Rogue could control the witnesses and the trial itself. At the least hint of opposition to his interests, Wood could be ready with "money, *lathials*, and *sarkiwalas*" to crush any protest. Whips were also part of the planter's arsenal. The planters' chief source of information about the local society, the Bengali *amin*, was dispensable. If he outlasted his usefulness, he could be disposed of in jail. Gopinath's predecessor's career had ended there, and Gopinath was threatened with imprisonment too: "tomorrow see work not good, myself send you jail".<sup>20</sup>

### **Difference in Perception Between Bhadraklok and Chhotolok**

While there was a certain amount of conspiracy and planning with the imprisonment of Golak Basu, there was no such problem with the poorer members of rural society. Thus there were many examples of the ease with which the planter, in collusion with collaborators like Gopinath, could thrust the ryots into jail. "The criminal records of Bengal, from the time that indigo-cultivation was introduced into the province down to its final banishment, prove clearly and undeniably that 'murder, homicide, riot, arson, dacoity, plunder and kidnapping' were some of the means by which the ryot was forced to take up the cultivation of indigo".<sup>21</sup> With the law demarcating the breaking of the indigo-production contract by the peasant after

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<sup>19</sup>Ibid., pp. 194-95.

<sup>20</sup>Ibid., p. 247.

<sup>21</sup>Mitra, Neel Darpan, Appendix, Haranchandra Chakladar, "The Dawn and Dawn Society's Magazine", Calcutta, July, ↵

1905, p.150, quoting Sir Ashley Eden's abstract of 49 serious case studies and a file of heinous offences,

Vide Report of the Indigo Commission, Answer 3575, also see footnote no. 1, referring to paras, 43, 45, and 115, ↵

p. 155.

taking *dadān* as criminal, sending the ryot to jail became elementary.<sup>22</sup> The planter also expresses satisfaction about the efficacy of the new law, where ryots could be jailed for six months, a legal measure that was more effective than the new whip, nicknamed *Shyam chand* (cat-o'-nine tails) or *Ram Kant*.<sup>23</sup>

At the same time, there was a demonstrably different attitude towards the jail from the middle classes as compared to those ryots who were jailed frequently. The latter were the victims, as they could be used as tools to have false witnesses testifying to *faujdari* cases - most often against their will.<sup>24</sup> But their familiarity with the jail had given them a greater contempt for the jail than the *bhadralok*, as they had less to lose in terms of status; thus their attitudes are in stark contrast to the *bhadralok* in the play. Against Golak's despair, and his sons' concern, a ryot could defiantly pronounce, while being dragged off to jail, "Come, I will go, I'm not afraid, I'll rot in the jail, but I won't plant indigo!"<sup>25</sup> Again, the faithful ryot, Sadhucharan, who had been the recipient of countless favours from the Bose family, showed the supposed difference between *chhotolok* and *bhadralok* attitudes, regarding imprisonment. An educated ryot, Sadhucharan, unlike Golakchandra, was not daunted by the harsh reality of the jail: in fact he could even think of voluntarily thieving and going to the jail for taking care of the old patriarch of the village.<sup>26</sup> Whether the author, belonging to the *bhadra* class, cherished the myth that the *chhotolok* should tender such allegiance to the village patriarch is a moot point: in the play. Sadhucharan made the offer, and rumour, "with no better authentication than family tradition", had it that Joykrishna Mukherjee's personal servant was also equally loyal, after the manner "typical of [the] class of domestics who formed lifelong ties to their middle-class or upper-middle class

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<sup>22</sup>*Ibid.*, p. 169.

<sup>23</sup>*Ibid.*, referring to footnote no. 2, p.159.

<sup>24</sup>Rao, *Blue Devil*, p.203.

<sup>25</sup>*Ibid.*, p.214.

<sup>26</sup>*Ibid.*, p. 235.

employers".<sup>27</sup> He, too, followed his master to the jail on the occasion of his arrest.

Again, Dinabandhu Mitra created Torap, the "pseudo-peasant" and a "pseudo-rebel",<sup>28</sup> who attempted to understand the difference between the "bad" and the "good" Englishman in terms of "baadanoker chhawal" (son of a respectable man) and "belater chotalog". (the low castes of England).<sup>29</sup> But the different categorisations went deeper than that. Even if the author was from the bhadra section, and had grafted on his own perception of the "scion of a respectable family" onto a peasant, was there an acceptance of this divide, with its concomitant negative connotation amongst the lower classes? Torap might be a spokesman for Dinabandhu, and therefore castigate the planter as *belater chotalog*, with whom the judge, *the badanaker chhawal* did not dine,<sup>30</sup> but then to what category did he believe that he himself belonged? This question must necessarily remain unanswered, as the very nature of the literary sources precludes an answer of that kind. But it is clear that among the bhadralok there was a bipolar division along bhadralok and chhotolok lines, as Dinabandhu showed by using a different kind of Sanskritised Bengali for the bhadralok and a Bengali dialect for the chhotolok. This distinction was deliberate, deemed appropriate for a stage play, where there were no other distinguishing marks, apart from speech and dress, that could set the bhadralok apart from the chhotolok. In other contemporary literary sources, the satires and novels, where the distinction could be expressed in the written word, such a device was not thought necessary.

The bhadralok, as previously observed, was also circumscribed by their faith and

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<sup>27</sup>Neelmani Mukherjee, A Bengal Zamindar: Jaykrishna Mukherjee of Uttarpara and His Times, Calcutta, 1975, p.221.

<sup>28</sup>Ranajit Guha, "Neel - Darpan: The Image of a Peasant Revolt in a Liberal Mirror", Journal of Peasant Studies, ↵  
2:1, Oct. 1974, p.41.

<sup>29</sup>Ibid., p.39.

<sup>30</sup>Rao, Blue Devil, p.204.

admiration for the "rule of law".<sup>31</sup> Ranajit Guha observed that "the function of *Neel-Darpan* [was] to generate an illusion about British rule in India as a good thing with only a few minor points here and there that can be easily mended".<sup>32</sup> This was faithfully reflected in the newspapers, pamphlets, and other media of bhadralok self-expression at the time. The middle-class women, completely insulated in the inviolate *antahpur*, lacked even this qualified acceptance of the "rule of law" established under the British. Far more exposed to the misrule of the planters, Sadhucharan's wife, Rebati, had no such illusions. Lacking the protective shell of the *antahpur*, she had witnessed the forcible removal of her brother-in-law, Raicharan, to the *kuthi*, and was familiar with the extortions of the planters. She was also conversant with the manner in which the peasant women were used as hostages to secure the compliance of the men. She was therefore not as naive as Savitri, Golak's wife, who was incredulous when Rebati informed her of the planter's dishonorable proposal to her daughter through the village-sweetmaker, Padi-*mairani* (sweet-maker), a woman of loose morals,<sup>33</sup> and whom Nobinmadhab stigmatised as "a wicked creature, evil thing".<sup>34</sup> Rebati was, moreover, not completely cut-off from the law-making process, as the Basu women were. This was because the Basu women excluded from their society such informers of bad character such as the *mairani*; but for Rebati there was no way out, as her house had no fence, and she could not keep unwanted people away. It was therefore she who informed Savitri about the law which could imprison ryots for six months, a sentence against which there was no appeal, and under which Golak might be imprisoned.<sup>35</sup>

Apart from *Neel Darpan*, there were other plays and satires of the period which highlighted the plight of the Bengali bhadralok inside the jail. By these accounts, the jail

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<sup>31</sup>Guha., "Image of a Peasant Revolt", pp.7-11. Also see Chapter Four.

<sup>32</sup>*Ibid.*, p.11.

<sup>33</sup>Rao, *Blue Devil*, pp. 200-01.

<sup>34</sup>*Ibid.*, p.213.

<sup>35</sup>*Ibid.*, p.201.

rules and regulations were designed deliberately to torment the sensitive bhadralok, while the coarser chotolok suffered no such problems, and hence, by implication, were better off. After the play became popular, the Reverend Long was imprisoned in 1861 following a highly publicised trial, as discussed in Chapter Two. After this point, the subject of jails never left the political debate: they kept coming into focus from time to time, either as the necessary appendages of the government, or as instruments of oppression. However, it must be made clear that at this stage jail sentences had not transformed the jails into "places of pilgrimage", as noted in Chapter Four. Some social commentaries, confined only to the city of Calcutta, did deal with the kind of crime and criminality that flourished in the underworld, and where the courts and jails were seen as playing an integral part to keep the criminals in check. The excesses of the institutions were noted, but were ascribed to the need to control the underworld. One such satirical tract, written in 1865, was named after the genre it represented - Samaja Kuchitra (The Bad Picture of the Society).<sup>36</sup> Another, more farcical in nature, but dealing with the same theme, was styled Kalikata Nukochuri, (Hide and Seek in Calcutta).<sup>37</sup> Thus, though always visible to anyone who cared to look for it, this aspect of the colonial system did not arouse a grave concern amongst the Bengali literati. There were storms of controversy against the laws which impinged on social customs, like the banning of sati in 1829, or the law allowing widows with the right to remarry in 1854. But the apprehension and incarceration of criminals drew little attention till the 1870s, apart from passing references to the odium attached to jails in plays like Neel Darpan. The 1870s, however, saw a spate of plays, farces and satires revolving around the jails as a site of colonial coercion, or at least having the jails as a peripheral concern. This could possibly be a direct result of the great deal of official concern shown in the 1850s and 1860s; moreover, the 1870s, were a period of intense speculation about the nature of the colonial legal and penal institutions, especially their oppression of the bhadralok.

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<sup>36</sup>Bhubanchandra Mukhopadhyay, Samaja Kuchitra, 1865.

<sup>37</sup>Chunilal Mitra alias Tekchand Thakur Junior, Kalikata Nukochuri, Calcutta, 1869.

### The Underworld and the Law

The underworld and the *bhadralok* were far removed from each other. Sachitra Guljar Nagar, a satirical tract, first published in 1871, gave a description of this alien world, headed by people "whose very shadow was feared by the *badamanasher chheley* [big peoples' sons]".<sup>38</sup> After dark, the kings of the road, going by colourful names like "eunuch [*haabshi*] Madhai", "Phalna half-Hindu", *khunay* [murderer] Goklo, would rob the *bhadralok* of their watches, walking sticks, or shawls, and thus get money for their addictions (opium, drink, gambling). There were also one or two women who had a reputation as terrifying human beings. *Galakata* (cut-throat) Hara was a famous land-lady in a narrow street called *Makhanwalar Gali* which was notorious for "the murders, massive thefts, suicides by hanging and by taking poison, riots, and drunken bouts [these crimes were never traced and the mere recollection of such crimes would send shivers down one's spine]".<sup>39</sup> Another landlady, called *bakna* (black calf) Piyari, inhabited the same street: an ugly woman of huge dimensions and equally awesome voice, she was capable of putting everybody to flight before her. She rented out houses in the dangerous street, and succeeded in collecting rents from each one of her tenants. *Bakna* Piyari was constructed by Datta as the complete antithesis of the middle-class women inhabiting his world. Piyari would fight for her earnings armed with an *aansh-bonti* (curved blade for cutting fish). Even *haabshi* Madhai would run when Piyari was on the war-path with her broom. This, then, was a world the *bhadralok* were completely unfamiliar with, where even women were dangerous and rowdy.

It was only a handful of the *bhadralok* who occupied an uneasy terrain amongst such shady characters through poverty, and the upper classes wanted this state of unfamiliarity with the underworld to continue. But this was not always possible. Occasionally someone from the *bhadra* class would be caught in the toils of the underworld and be put through the "tortures of hell." Sachitra Guljar Nagar explored the helplessness of one such boy,

<sup>38</sup>Kedarnath Datta, Sachitra Guljar Nagar, (ed.) Chittaranjan Bandopadhyay, Calcutta, 1871, 1982(rep),p.17.

<sup>39</sup>ibid.,p.17

Hemanga Basak, trapped by his poverty, in the world which the upper classes normally avoided. Unable to pay his rent to Piyari, he was rendered homeless on the death of his father,<sup>40</sup> and was taken up by the *paharawala* for a thief and locked up the very night he found himself on the street: "the first cousin [on the maternal side] to the thief [the *paharawala*], came and poked Hemanga with his baton '*kaun hyay re, utho utho ayeshaa daanda lagayega*', [who is it, get up or I will hit you]". The sergeant took him for a thief, even though Hemanga, "scared stiff", tried to explain he was a homeless beggar, and had him confined in the *phatak* (lock-up).<sup>41</sup>

The picture of Hemanga as the victim was completed by the description of the lock-up, which clearly indicated its unfitness to house any *bhadralok*. It was completely airless and smelly. The floor, the walls and the bed were so dirty under several layers of dirt, they looked black. There were birds' nests in every crack and crevice, and dense cobwebs covered with soot hung everywhere. Mosquitoes plagued Hemanga; mice and huge cockroaches ran all over him in the dark. Morning saw him in a state of complete collapse. Afraid that Hemanga was going to die, the sergeant quickly checked him for stolen goods and, finding none, released him.<sup>42</sup> Hemanga was finally befriended by a rich man, Nirod Chandrababu, and quickly became his favourite, much to the envy of the other hangers-on. One of them conspired against him, and framed him with theft and for carrying on a clandestine relationship with Nirodbabu's wife. Badshah, another of Nirodbabu's hangers-on, who had actually stolen a watch from his benefactor was caught at the same time and both the accused were taken to the police-station.<sup>43</sup>

What the author had to say about the police the courts and the jails, all linked together at this juncture, to form an unbroken sequence of oppression of the *bhadralok*, who were in

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<sup>40</sup>*Ibid.*, p.21.

<sup>41</sup>*Ibid.*, pp.25 - 26.

<sup>42</sup>*Ibid.*, p.27.

<sup>43</sup>*Ibid.*, pp.90 - 92.

general completely harmless like Hemanga Basak, was revealing of the attitude of many members of the middle class. Even the acquittal of Badshah, on a few technicalities, was part of the ploy to make the law seem completely one-sided and fit only for a person who could shout the loudest. Hemanga, soft-spoken and unable to lie, fell an easy victim to the legal process, thereby depicting the bhadralok again as the natural prey of the legal and penal institutions. Both Golak in Neel Darpan, and Hemanga Basak in Sachitra Guljar Nagar could only state they were not guilty: they could produce no witnesses, they could produce no impressive counsel for the defence. The truly guilty won the cases, while the victims were victimised twice over, before the courts or magistrates and in jails: Golak was imprisoned for six months, and Basak for fifteen days with hard labour.<sup>44</sup> In between narration, the author soliloquised on occasions, and Hemanga's arrival in the police station was used by him fully to record Datta's opinion of the penal apparatus, without hiding his class bias: "for a bhadralok to be taken by the police is like death; for this reason, old-fashioned old men, even in the face of considerable losses, would never go the police". Thus the police as an institution was perceived to belong to the same genre of coercive power wielded by the colonial government as the courts and jails. Similar reactions, flowing in a continuum, were exhibited towards *faujdari* cases for "it was very easy to turn truth into falsehood, and where money, scattered wisely", could get the allegiance of "many Shyamus and Baandrus" (puns on Hindus and Muslims respectively, the latter literally meaning monkey-like), and "where the bhadralok were compelled to be lower than the thief", was thus a disgusting place which the bhadralok avoided.<sup>45</sup> Neerad's comment on the legal process summed up the attitude of the newspapers as well: "the laws that have now been passed are only to dishonour the bhadralok".<sup>46</sup>

Hemango could not avoid the jail sentence, and the sergeant "tied his hands and took

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<sup>44</sup>Ibid., pp.101 - 03.

<sup>45</sup>Ibid., pp.93 - 94.

<sup>46</sup>Ibid.,p.106.



him off to the jail, while the witnesses to this sad scene were sympathetic".<sup>47</sup> The description of the jail, again using Basak as the bhadralok victim, showed the fearful image the word "jail" conjured up in the bhadralok mind:

The mind is as saddened by the news that one's own relative has been sentenced to imprisonment as by the news that he has died accidentally, or has become a pauper. The pain, insult, the sting behind a jail sentence really hurts a bhadralok: death is preferable to such an existence in a jail, where only the evil criminal can thrive and whose hard heart such a misfortune cannot touch. To reside in the jail is truly difficult for a religious Hindu, as it is really difficult to retain the sanctity of caste here.<sup>48</sup>

### **Inside the Jail**

Here, for the first time in a decade, since the oblique reference to the pain and humiliation implied by the sentence of imprisonment in Neel-Darpan, was a comparable indictment made by a member of the middle classes of the jail experience.<sup>49</sup> There were also clear depictions in Sachitra Guljar Nagar, of the *dewani* and *faujdari* jails, revealing the bhadralok's growing familiarity with the interior of these institutions. The *dewani* jail buildings were "damp, covered with moss and fungus, odoriferous, with black walls, and tiny cells, where the prisoners could barely survive".<sup>50</sup> The author, however, was aware that conditions had improved over the last eight to ten years: he was therefore filling in the ten-year back-log of complaints, and then carrying on from there, by stating that conditions in the rainy season

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<sup>47</sup>Ibid., p.102.

<sup>48</sup>Ibid., p. 109.

<sup>49</sup>Ibid., Introduction, p.16. Editor's note placed the satire after the play, Neel Darpan, before which no open indictment

was recorded. Upendranath Das's Sarat- Sarojini Nataka and Surendra-Binodini Nataka were published in 1874 and 1875 respectively.

<sup>50</sup>Ibid., p.109.

turned the *dewani* prison into a veritable lake. Living conditions in the *faujdari* jail, where Hemanga was serving his sentence, were much worse.<sup>51</sup> The cells were extremely small, damp, dirty and smelly, and the prisoners had to lie on threadbare blankets. The discipline of the jail was savage, and harsh punishment was inevitable if the prisoner had not completed his quota of breaking stones, or had rested during working hours. Bribery was rampant, and the jail officials were open about taking bribes. Light work, doctor's certificates, and no punishment made a prisoner's life bearable if he had money. But, as Hemanga had no such advantage, he was savagely whipped if he stopped working even briefly. Breaking stones raised blisters on his hands and caused them to bleed. The burning sun, his thirst, his aches and pains, wounds and the humiliation of it all made his life a misery. Thus, by implication, a fifteen-day sentence on a *bhadra-santan* (son of a respectable man) was enough to kill him.

As compared to the *bhadra* prisoner, European prisoners had a more comfortable time. They could win better treatment by throwing temper-tantrums and uttering threats of violence, and after dusk, they had greater freedom of movement. Datta, therefore, felt that for Europeans, prisons were truly the "father-in-law's" house or *swasurbaadi* but for the Indian prisoner the jail was the house of torture or *hairanbaadi*.<sup>52</sup> One can therefore argue that the jails were perceived to be an arena for bodily subjugation and subjection, in a strictly legal manner, of a significant proportion of the Indian population under a rigid, punitive, alien regime. No brutality or rough usage of the prisoners was thought to be impossible within the four walls of the jails; work and whipping complemented each other under harsh prison conditions in the public imagination, as represented by these nineteenth-century playwrights to the public. Inaccessibility to information about the jail administration, the requirement of prior permission to visit the jails as visitors, all added to the mystery surrounding these sites of confinement, visibly guarded through force by the colonial

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<sup>51</sup>*Ibid.*, pp. 109 - 14.

<sup>52</sup>Datta, *Guljar Nagar*.

government.

However, as mentioned in Chapter Two, the Bengali middle classes did not dissent from the necessity for such places of confinement or the need to put malefactors on the straight and narrow path. But having imbibed other liberal ideas along with the conviction that the forcible cordoning off in state institutions of a criminal section of the population was beneficial, the harsh prison system drew criticism from the literati. the doctor in Jail Darpan asked. This was becoming a concern with the educated Bengali and it was reflected in the play Jail Darpan. The starkness of the penal policy was discussed by the native jail doctor in the play following the death of one of the convicts, "reform the prisoners, teach them to distinguish between good and bad, but it is horrible to kill them so cruelly".<sup>53</sup> The concept of the segregation of criminals in jails to preserve a healthy social structure and keep it reasonably free of crime, was not questioned. But it was also felt that the jails should be places of reform and humane treatment:

Are these jails created for the murder of men? Are not these institutions set up for the correction of criminal characters? .... Instead of imparting wholesome advice to the prisoners, the cruel treatment meted out to them has the opposite effect of further distorting their characters ... And anyway, this harshness does not become the British rule [in India].<sup>54</sup>

The prison system set forth a clearly naked authority (both violent and punitive) over Indians, but nevertheless created a space for protest through its own institutions. The political movement for independence, led by the Congress was quick to appropriate this "created" space, which had the explosive potential for a direct confrontation between the ruler and the ruled, and use it as a symbol of defiance by courting arrest from the 1880s. Because of the long-held perception of the jail as a chamber of horrors in the Bengali mind,

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<sup>53</sup>Dakshinaranjan Chattopadhyay, Jail Darpan, Calcutta, 1875, p.54.

<sup>54</sup> Ibid., p.54.

flagrant defiance of the symbol of power of the colonial rule gave a fervour and daring to those braving the rigours of the jails.

In the 1870s, at the time these plays were written, it cannot be said that political criticism of the colonial government had really taken off. It was merely nascent. There was a lack of clearness about how far colonial rule was responsible for the excesses in the jails, and to what extent individuals could be held responsible for palpable misgovernment. In Jail Darpan, the government and its individual minions are seen as separate entities entirely. Thus Madhu, emerging alive from the jail, distinguished to Sibnath between jail discipline and cruelty: "The Government certainly has not laid down cruel rules ... The officials are responsible for misusing the power entrusted to them".<sup>55</sup>

Thus, even though the first half of the nineteenth century had seen the intelligentsia place an inordinate amount of hope and faith in the justness of British rule in India, by the 1870s, partly because of this very hope in the earlier period, there had emerged some distinctly critical strands of political thought, which attacked British rule as "Un-British". The middle class in Neel Darpan had asserted this faith in the "rule of law", even though its faith in individual Englishmen had been badly shaken. A decade later, some of the naiveté had disappeared, and Kedarnath Datta in Sachitra Guljar Nagar could comment satirically: "The burning heat of the midday sun blazed down on the beggars, with no relief, as the wind, fearing the wrath of the *badasaheb*, had followed him to the mountains of Simla. The poor beggars were being crisped while the *badasaheb*, fanned by cool winds, passed tough legal measures".<sup>56</sup>

In the play, Jail-Darpan, the language of the *pyada* was rough Hindi, while the English official spoke half English and half Bengali. The play was considered, and sympathetic towards the jail-inmates, though their crimes were not approved of. Wrong-doing of any sort had to be expiated in the jail. The nineteenth-century concern about the

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<sup>55</sup>Ibid., p.91.

<sup>56</sup>Datta, Guljar Nagar, p. 25.

dissoluteness of rich men's sons is reflected in Sibanath. He neglected his wife and cultivated the society of an expensive prostitute, Biraj. His friends, Tarini, Gopal and Madhu were cut-throats. While Gopal and Tarini robbed Sibanath outright, Sibanath sealed his financial ruin by squandering money on Biraj. He then faced the degradation of being imprisoned in the *diwani* jail for debt. Thus the jail was seen as the logical end of any dissolute career. This was also observed in the fate of his thieving friends, who were seized by the police. The detective or the *goyenda*, a Bengali who claimed a government reward for unearthing a crime, the English police inspector, and the *jemadar*, were all made to arrive in force at the precise moment the three thieves triumphantly proclaimed the inability of the police to catch them, thus displaying the inexorability of the law and the power and reach of the punitive institutions.

The play focused briefly on Sibanath in the *diwani* jail, from whence he emerged with a complete loss of honour. Even Biraj, the prostitute, and Sibanath's ex-mistress, shunned him, and his life ended ignominiously in suicide. However, it was actually his three erstwhile friends, suffering in the *faujdari* jails, who took up the major portion of the play. The author only left the least culpable, Madhu, alive at the end of his jail sentence to report the jail conditions. Through the three thieves, the dramatist traced the Bengali dictum - *Lobhe paap, paape mrityu*, or greed leads to sin and sin to death. *Jail -Darpan* projected strongly images of infamy and brutality which were the quintessential Bengali perception of the "colonial jail", yet underlying the criticism, there was also acceptance of the punitive institution, with its principles of labour and discipline.

The knowledge of the administrative procedures in jails, (however distorted), and the author's familiarity in discussing many of them, like the system of transferring prisoners, and the medical examination by the jail doctors, lend a kind of verisimilitude to the jail images evoked by him and made them convincing to the untutored public. The same reflections of brutality (minus the sympathy) can be observed in the Mohanto's internment. This seems to reinforce the impression that the jails possessed grim associations of physical

torture in the Bengali mind: when this is clubbed together with the other evils faced by the jail inmates: loss of caste, loss of weight because of the terrible jail diet, great mental agony, and the regimented work ethos regulated by bells, the picture of horror is clear. As explored in the Chapter Four, this was also part of the *bhadralok*'s wider experience of a colonised society, with a range of humiliating experiences, for which the jails stood in as a metaphor. At the level of reality, there could be no ambiguity in going to jail. Sibanath's stint in the *diwani* jail, though devoid of physical privation, strips him of all character. Even a character so dissolute as Sibanath felt the mortification of being "touched" and arrested by a lowly *pyada* keenly. He reflected: "An ordinary *pyada*, has caught hold of the hand which once spent so lavishly. Nothing in the world can be as shameful as this experience".<sup>57</sup>

This humiliation of being caught and put behind bars was not his alone. Through the conversation of two other *diwani* jail inmates, sharing the same cell as Sibanath, the dramatist highlighted the ignominy of the experience. The third bankrupt crudely perceived life in jail as free of responsibility, beyond all financial claims of creditors. Unable to perceive the disgrace, he saw only the futility of such arrests for debt. For him, it was the creditor who was finally disadvantaged, for he could never recover the money he had lent, but only had to be content with putting his debtors in jail, that too after costly litigation. The elderly prisoner violently disagreed: "Only those who are completely shameless, can talk like that!"<sup>58</sup> Thus the author tried convey the idea that the perception of the loss of reputation, social disgrace and the ignominy of being "jailed" were matters of individual and class perception only. The author seemed to suggest that the *diwani* jail left no tangible mark on the prisoner, and if enlightenment did not dawn upon the prisoner, the experience remained valueless. Madhu could therefore tell Sibanath, after surviving the rigours of the *faujdari* jail: "You were a thousand times better off in *diwani* jail. Had you been sent to the *faujdari*

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<sup>57</sup>Chattopadhyay, *Jail Darpan*, p.22.

<sup>58</sup>*Ibid.*, p.30.

jail, even your bones would have been untraceable".<sup>59</sup> Though the absence of physical privation in the *diwani* jail made it less of a grim symbol, symbolising disgrace than anything else, the *faujdari* jail was another matter.

There was a sustained emphasis on brutality in Jail Darpan in all the jail scenes, from the apprehension of the criminals from the beginning to the end, when Madhu emerged as the sole survivor. Every device was used to point to the jail as another world, far removed from the world the bhadralok were accustomed to. In this other world, set up especially to deal with the underworld of thieves and robbers, there could be no appeals to humanity, pity or ordinary kindness. Therefore, when Madhu tried to plead his non-complicity in the crimes against Sibanath, he was rewarded with a rough shove from the guard who said in Hindi: "Get a move on, quick, you bloody cheat!" and struck him with his baton.<sup>60</sup>

As a member of the bhadralok, the author of Jail-Darpan, was also caught up in the bind of the "subalternity of an elite",<sup>61</sup> and could not transcend its limitations, the outer parameters of which were delineated by the "rule of law". The author, however, hesitated to accept the jails unconditionally. Certainly he morally condemned thieves and robbers, and approved of their being locked up in the jails by the colonial government. But he could not reconcile himself to the brutality evinced there. The lack of a rehabilitation programme was deplored in the play, and the Government was accused of being "Un-British" for the harshness of its penal practices.

The general concept of work in the prisons, as expounded in Jail Darpan, conjured up tyrannical jailors terrorising the inmates into working till they dropped. There were some graphic images of the prisoners being tied to the oil-mill till blood oozed from their feet. Tarini informed Madhu : "The man with those sores on his feet you saw this morning ... had

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<sup>59</sup>Ibid., p.91.

<sup>60</sup>Ibid., p.29.

<sup>61</sup> Partha Chatterjee, "The Nationalist Elite" in The Nation and its Fragments: Colonial and Post-Colonial Histories,

Princeton, 1993, p.37.

them because he had been forced to work on the tread-mill".<sup>62</sup> Madhu and Tarini, thrust into a merciless punitive machine, were allowed no respite from work; thus, what was conveyed through the experiences of the two thieves was what the Bengali middle classes understood by the term, jail. No excuses, of ill-health or thirst, could earn a respite from hard labour. Madhu's pleas to be let off work on grounds of ill-health were met with a harsh refusal from the Inspector of Alipur Jail: "No, certainly not! I'll not listen to you. You have to finish all your work".<sup>63</sup> Even a request for water by the thirsty Tarini was unsuccessful: "You just want to sit and eat, and not work!"<sup>64</sup> Even mild protests were regarded as insubordination by the jail official and Tarini was whipped for questioning the denial of water: before leaving the Inspector assured them of his speedy return to "straighten them out". After his departure, both of them discussed and contrasted what they had heard outside the prison, to the reality inside.

Madhu: Brother, I heard that nowadays one doesn't get beaten up in jails, the prisoners are made to work ... what's this?

Tarini: People say [that] there is no longer any torture in the jails. Such people either don't know what they are talking about, or cannot perceive the faults of British rule.<sup>65</sup>

Tarini assured Madhu that there could be "no tougher punishments in the world than working the tread-mills and pulling the oil-press". This knowledge was acquired outside the jail, as both of them were "first-timers", and therefore logically, could not have learnt from a previous imprisonment. It is evident that the author could not separate his own awareness of colonial subjection from the character he had sent into the jail. As the knowledgeable commentator of the punitive devices in the jail, Tarini changed roles from the victim to the

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<sup>62</sup>Chattopadhyay, *Jail Darpan*, p.43.

<sup>63</sup>*Ibid.*, pp.39-40.

<sup>64</sup>*Ibid.*, pp.p.41.

<sup>65</sup>*Ibid.*, pp.42-3.



bhadralok-viewer of the harsh colonial penal policy. This was therefore a projection of the bhadralok's perception of the interior of the jail, through an agent deployed for the purpose of surveillance.

Gopal, the third victim-cum-viewer, fared far worse than his two companions, after he was transferred from Alipur to Jasohar (Jessore) jail, where along with another prisoner, he was set to work on the oil-press. The magistrate stood over them with a whip, (an unlikely event in practice), and forced them to pull harder at the oil-press. The magistrate had a few interesting things to say as well:

The jail is meant for punishing the wicked people, and certainly they are punished quite thoroughly here. Like God, who punishes in heaven, the Government punishes the wrong-doers in the jails. Personally, I feel that the Government should give all the prisoners very hard punishments.<sup>66</sup>

To a wilting Gopal, he said: "This is the consequence of theft. I won't let you go easily: until I see you writhing in agony, until I see you vomit blood, you have to continue working".<sup>67</sup> His fellow prisoner collapsed from thirst, and Gopal followed suit, vomiting blood. The two incapacitated prisoners were taken off to the jail hospital, where Gopal died, under the sympathetic eyes of the Bengali jail doctor, who himself was another bhadralok personifying the dilemma of the "subaltern" elite. His position as a subordinate jail doctor, which forced him to certify falsely the capability of prisoners to bear harsh punishments, constantly warred with his instinct as a doctor and the disinclination to issue such certificates: "I have to abandon my inclinations as a doctor, and say the prisoner can ... stand twenty lashings, when I know ... he cannot stand more than ten ... To keep the Magistrate happy, I ... agree with what he says, but I have seen the tragic consequence of such indecisiveness on my part..."<sup>68</sup>

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<sup>66</sup>Ibid., p.48.

<sup>67</sup>Ibid., p.48.

<sup>68</sup>Ibid., pp.51-52.

Medical supervision in jails, especially by British civil surgeons, was seen as nothing but authorising the infliction of harsh corporal punishment. In direct contrast, the native doctors were seen as next to useless by the alien jail officials for their sympathetic treatment of the prisoners. A native doctor took the physical incapacity of the prisoner into consideration before certifying to the soundness of the convict's constitution. The author's dilemma, infused with a kind of class criticism for unwillingly collaborating with colonial rule, was transposed onto the position of the native doctor employed in the jail, where he visualised the tortured souls that were his own countrymen. The Western liberal professional ethics, as imbibed by the educated, professional middle classes, again embodied in the native doctor, and its distortion in the colonial context, posed a great moral problem, as exemplified in the native doctor's speech, who felt that "this kind of work should be abjured on moral grounds", and yet could still yearn for promotion within the system.<sup>69</sup> How deepseated this moral problem was can be seen in a real-life incident, where fact followed fiction. Jodunath Mukherjee, appointed as the doctor of the Birbhum jail, tendered his resignation on the grounds that he could not cut up corpses, as he would "lose caste", and even his servants would leave him for fear of losing their castes.<sup>70</sup>

In Narhal Jail, the *chhota* doctor, again a native, was made to say something similar about the moral and professional dilemma confronting him, while also attempting to come to terms with another complication - equal punishments being accorded to Brahmins and lower castes alike. Thus while examining a Brahmin, who had been sentenced by the magistrate to twenty lashings, he came to the conclusion: "No, this person has never been whipped before, he has a soft body. The Magistrate has ordered twenty strokes, but I can't, ... sign the certificate. He is a Brahmin, and lives on other people's gifts and milk and curds, how

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<sup>69</sup>*Ibid.* p. 52.

<sup>70</sup>J. Macpherson, Surgeon, Medical Board, to Superintending Surgeon of Barrackpur, 2 Oct. 1854, 128, 21, citing Dr. Sheridan, Civil Surgeon of Birbhum, BJP, 21 Dec. 1854.

will he be able to stand twenty strokes?"<sup>71</sup> He then certified: "I do hereby certify that Nedheeram Bhottacharjee will be unable to suffer more than ten stripes".<sup>72</sup>

Here the author's caste bias is apparent. He then deliberately introduces the Magistrate and the Civil Surgeon, both alien figures of authority, with no understanding or respect for the Indian caste-system, and determined to judge the prisoners on the same plane - that they were all thieves. The Magistrate was therefore portrayed as incensed with the certificate: "I cannot believe it. Native doctors are good for nothing, they are somewhat better than compounders...." The Civil Surgeon, an Englishman, was called in to give a second opinion. He read the certificate and opined: "Oh, no - he can easily suffer twenty strokes...." He then denounced the native doctor's certificate: "What do these native doctors know [of medicine]? The prisoner can easily take ten stripes more, he looks such a well-fed billy-goat!"<sup>73</sup>

While the horrors of prison-life were sought to be conveyed to the theatre audience or the reader through scenes like this, there was another, more horrific aspect explored in the play: the loss of respectability. It was not just the fear that caste restrictions in matters of food or even contact with low-caste people could not be avoided in jails. It was also the mental degradation of the prisoners living in such mortal fear of punishment that they voluntarily cast aside their deeply-embedded caste beliefs in pursuit of mere survival. In Alipur Jail, Gopal actually begged the jail *darogah* to give him the job of a cleaner of jail-refuse (the work of a *methar*), much to Madhu's amazement. Tarini explained later to the thunder-struck Madhu that Gopal had opted for such degrading work to escape the punitive jail labour:

Brother ... you don't understand, ... after a few more days even we will be wishing for Gopal's work, for there is one thing to be said about the work

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<sup>71</sup>Jail Darpan, p.59.

<sup>72</sup>Ibid., p.59.

<sup>73</sup>Ibid., pp.60-61.

of a cleaner. He only works in the morning, after which he has the whole day to rest! <sup>74</sup>

But Madhu was incapable of relinquishing the vestiges of respectability: "No, even if I die doing work, that would be better than touching that hellish filth".<sup>75</sup> These characters were surely expressing the fear of the *bhadralok* regarding the moral degradation that was concomitant with a jail sentence. It is not a coincidence that only Madhu was saved by the author, as only he had enough moral fibre to resist the tyranny of punishment, refused to bow down morally in prison and clung tenaciously to the precepts taught by the society in which he lived outside the prison walls.

Nedheeram Bhattacharjee, a Brahmin, unable to resist even the fear of punishment, could not lift up his head when he was questioned on his un-Brahmin like thieving habits by the *jamadar* of the jail: "*Thakur*, you are a Brahmin, why did you have the low urge to steal? You are all *bhadralok*, if you set such an example, who will keep to the straight and the narrow path?"<sup>76</sup> Nedheeram was in dread of his sentence of twenty lashings and when the *jamadar* mentioned that the British officials were sympathetic to the lower castes, he showed a readiness to jettison his Brahmin status and take refuge under extremely low-caste names, thereby revealing another instance of moral degradation under the threat of punishment. The *jamadar* analysed the English jail officials anti-high caste prejudices in the following manner:

Lower castes occasionally defy these foreigners outright. But the English have realised that the *bhadralok* do not protest at ill-treatment and over-work, and therefore they torture the *bhadralok* all the more. If you had given a low-caste name, you would have got off with just ten stripes.<sup>77</sup>

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<sup>74</sup>*Ibid.*, p.39.

<sup>75</sup>*Ibid.*, p.39.

<sup>76</sup>*Ibid.*, p.56.

<sup>77</sup>*Ibid.*, p.58.

The Brahmin's response was characteristic: "if only I'd known about this, I would have claimed to be of *Haanri* or *Kaora* caste!" (Both castes of untouchables).<sup>78</sup> Nedheeram was a typical poverty-stricken example of the higher castes, reduced to stealing a bunch of bananas from his neighbour's garden, yet he could not forget his position as a Brahmin, and therefore complained: "It is difficult to scrape together a livelihood ... I stole a bunch of bananas from my disciple's garden, the guy got me arrested ... I don't want to see that chhotolok's face again".<sup>79</sup> Thus, the author perceived the debasement of the high-castes partially as a consequence of poverty, the fear of punishment, or the forced labour in jails.

Respectability was undermined in jails in other ways, too. A poor diet and a inadequate clothing, that stripped all dignity from the prisoners' persons, totally demolished any kind of identification to the lives led outside the jails. It was almost as if one changed into a lower identity with the discarding of clean, civilian clothes and putting on the jail garb, a loincloth (a short *dhoti*, which the bhadralok thought inadequate). When the trio, Gopal, Tarini and Madhu, were introduced for the first time to the loincloth or *koupeen*, the attire of the convict in Alipur Jail, they were shocked. Madhu declared: "Oh God! Wearing that actually means being naked. I don't think there is even half a yard of cloth to that".<sup>80</sup> The *darogah* replies to this indignant protest in a sarcastic vein: "You people are really 'babus', aren't you? ... If you wanted such soft lives, why did you steal? Whilst you were stealing, didn't you happen to remember that there is a thing called the government jails, where one has to break stones, draw the oil-mill, work the tread-mill and the looms till one coughs up blood?"<sup>81</sup>

This remark also revealed the ubiquitous image of government jails, the punitive side of justice, waiting for the wrong-doer at the end of the road of crime. The playwright also

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<sup>78</sup>Ibid.

<sup>79</sup>Ibid., p.56.

<sup>80</sup>Ibid., pp.35-36.

<sup>81</sup>Ibid., p.36.

drew on his knowledge of the system of transferring of prisoners, jail-fever, etc. to present the "true" Jail Darpan. Madhu and Tarini, in accordance with jail rules, were shunted from Alipur to Burdwan jail, where Tarini succumbed to jail-fever. Gopal was transferred from Alipur, where he had a reasonably easy time of it, owing to his preference of the work of a *methar*, to Jasohar (Jessore) jail, where he died from overwork. Madhu, after innumerable tribulations, finally emerged from the Bankura jail as a free man.

Significantly, the curtain was rung down on Jail Darpan by another place of confinement, the lunatic asylum. In the prisons the prisoners were allowed no speech. Paran, Gopal and another convict conversed in hushed tones, with glances over their shoulders in Jessore jail, and Paran conveyed the fear and suspicion that attended any criticism of the jail discipline: "I will tell you about the conditions here but don't tell anybody of this. Even the walls have ears here ...."<sup>82</sup> The highly politicised twist given to Jail Darpan by using lunatic asylums, again a colonial institution for confining lunatics, to create space for free speech, whereby, through an ingenious device, the author disclaimed all responsibility while at the same time registering a protest, spelt of things to come. Thus in the lunatic asylum, because madmen were not responsible for their sayings and doings: the depicted scene of conflict within confinement, where protesters disengaged, while at the same time challenged the colonial rule. The prisons, as the direct place of confinement, at this point were seen to muzzle speech, where protesters had to claim full responsibility for protest, and thus could be punished. But the author therefore, deliberately shifted his locale, using the space created by the irresponsibility of lunacy to do a little soliloquising of his own. Thus, Keshta and Beshta, two mad inmates of the asylum addressed a rousing speech to their countrymen, and disclaimed responsibility for it at the same time:

Is Bharat [India] alive? Oh Indians, it is because of the lack of unity that you  
have been reduced to this lowly state ... The English pass what laws they

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<sup>82</sup>Ibid., pp.44 -5.

please, ... I don't ask you to struggle for independence that's wishful thinking ... But unite, work together for a stronger India ... If you dismiss my words because I'm mad, you'll be the loser.<sup>83</sup>

By the 1860s, the government's failings were being critically assessed. To the discerning Bengali the authoritarian figure of the Englishman had become visible, as discussed in Chapter Four. How clear this perception was, can be assessed by the musings of a common thief Madhu, in Jail Darpan, when he confronted the English jail superintendent of the Bankura jail: "It is not that all Englishmen are petty. Only those who come to this country in search of quick riches, and leave, are wicked (*badmaish*). But our lieutenant-governor (*Lat-Sahib*) is not a bad man ...."<sup>84</sup> The English officials were perceived at different points as being just, or harsh, impartial, and full of moral vigour, as opposed to the amoral conduct of the Indian criminals, but the jail officials were uniformly depicted as dehumanised, devoid of love, pity or any humane emotions whatsoever, and actually triumphant over the plight of the jail inmates. There was no longer any confusion about the source of authority; the English officials emerged clearly as the key-figures in the relation of domination and subordination between the rulers and the ruled. The indigenous army of petty tyrants were seen to draw their power from this source, and though they were manipulative and bribe-hungry, they did share a fellow-feeling with the victims. For instance, in Neel-Darpan the *diwan*, conscious that he too would share the same fate in the jail once he had outlived his usefulness, tried to convince the planter of the advisability of soft-peddling on Nobinmadhab's case and to let the dissatisfaction generated over Nobinmadhab's plight die down. He called himself, in something approaching self-loathing, the butcher's dog, easily satisfied with the entrails of the victims tossed to him.<sup>85</sup> In Jail-Darpan as well, the native *chaprasi* in the jail, when both Gopal and Paran fell unconscious

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<sup>83</sup> Ibid., p.73.

<sup>84</sup> Ibid., p.67.

<sup>85</sup> Rao, Blue Devil, p.245.

under the magistrate's brutality, tried to intervene "Saheb, he has fallen down ... Let me fan him a little ..." <sup>86</sup>

It was perhaps easier to deal with moral and physical outrages on the hapless jail inmates, when the perpetrators spoke an alien tongue, either Hindi or English. Perhaps too, by distancing authority from anything Bengali, these plays symbolically represented administrative control to be out of Bengali hands. Thus the English official spoke a mixture of English, and distorted Bengali and Hindi. The petty Indian officer spoke Hindi. Indisputably, many of the *paharawalas* and *darogahs*, and jail officials did come from Hindi-speaking areas, so the language of the plays was partly grounded in reality. But the brand of Hindi used in this context may be interpreted as alienation of power. As an instance of such distancing of control from Bengali hands, a scene from a *puranic* play, *Shakuntala*, first published in 1879, can be briefly analysed.<sup>87</sup> The fisherman who found the ring Shakuntala had lost while bathing is caught by the *jamadar* and *chowkidar*. The *jamadar* accuses the fisherman in a peculiar language: "*Oh Jeliya! Tomko a cheej kem tarse mila? Tomto chor hyay. A ho chowkidar*". This should read as "*Oh Jeliya! Tumko yeh cheez kis taraha mila? Tum chor ho*" ("Oh fisherman! How did you get this thing? You are a thief".) The *chowkidar*, when called by his superior, answers "*keya hukum, jamadar sahib?*" The terrified fisherman, the victim, answered in Bengali, - "*Baba [father] jamadar sahib! I really haven't stolen the ring. You are tying me up for nothing. First judge me, then do what you please*".<sup>88</sup> A *puranic* play, with *Shakuntala* as the heroine and *Dushmantya* as the hero, used the Hindi-speaking *paharadar* and *jamadar* to denote a bully. There must have been Bengali-speaking *jamadars* and inspectors, but there was an obvious attempt to obliterate any such familiar links between the bullying, authoritarian figures and the Bengali language or the people.

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<sup>86</sup>Chattopadhyay, *Jail Darpan*, p. 50.

<sup>87</sup>Nanadalal Ray, *Shakuntala Nataka*, Nriyalal Sheel, Calcutta, 4th edition, 1879 (1286).

<sup>88</sup>*Ibid.*



In some plays, by shifting the immediately visible locus of power and brutal control to Muslim *jamadars*, a new meaning was imparted to "foreign rule" and thus "Muslim rule" could actually be read as "colonial rule". One play which used this kind of inverted metaphor to depict the enslavement of *Bharat Mata* (Mother India), under *Mleccha* (Muslim) domination was named Nirvapidip (The Extinguished Flame). It became so popular that the author was actually encouraged to write a sequel to it, where a brave Bengali son actually frees her from *Mleccha* torture and domination.<sup>89</sup>

### **Crime and Criminality**

There is a clear indication in all the plays discussed in this chapter of the ubiquity of the colonial law and its long reach which sooner or later grasped all wrong-doers. The theme of crime as harmful to society, and eventually to the criminal as well, permeated these texts. By implication, the definition of crime, as seen in literature, was flexible and included in its sweep aberrant social behaviour like dissoluteness, drinking or gambling, or seducing another man's wife. Thus, crime to the average Bengali meant not just the commission of theft, robbery or violence; it could mean any deviation from the social norms. And the unavoidable consequences of crime were linked invariably to the grim images of the colonial jail.

In this section, the texts taken up explore the variety of crime and retribution following in the shape of the colonial penal system. Thus the literature inadvertently brought forward the power of the state, for the transgressor never escaped the arm of law. However, only a few plays like Daktar Babu Nataka, published in 1875, had a professedly wider end in sight.<sup>90</sup> The others, tracts without much literary value, had no such wider perspective. In these, the image of the jail was evoked because of a social crime, the grave infringement of some cherished social customs. Perhaps an exception to this was the play by Bholanath

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<sup>89</sup>Anonymous, Nirvapidipa, Calcutta, 1876.

<sup>90</sup>Anonymous Doctor, Daktar Babu Nataka, Jogendranath Ghosh, Calcutta, 1875.

Mukhopadhyay, published in 1873, called Mohanter Chakrabhraman, (The Mohanto's Travel Round the Wheel), which was sharply critical of evil social customs that lead to tragedies. He attributed the murder of a young wife by her husband, the subsequent transportation of the husband and other disasters that befell the characters in the play to the evil custom of old men marrying young women, becoming totally besotted, and acceding to their whims, even if it meant sacrificing the virtue of their daughters. The other "Mohanto-Alokeshi" plays, like Mohanto-Alokeshi Natak by Maheshchandra Das, published in 1874 (1281), Oh! Mohanter Ei Kaj (Is This the Duty of the Mohanto?) by Jogendranath Ghosh, published in 1874, and Mohanter Jeman Karma Temni Phal (The Just Consequence of The Mohanto's Action) by Surenchandra Bandopadhyay, published in 1873 (1280) were all simply tracts. They generally aimed at a wider social stratum, with a colloquial and vulgarised version of Bengali, which would obviously be recognisable to the literate as well as the illiterate. They were levelled at a "heinous" social crime, a real life event, already referred to in Chapter Four, which had attracted much public attention and fury. How much this crime had gripped the Bengali society at all levels in 1873-74 can be seen from the crime finding a place in the Kalighat *pat* (folk art) which had a wide clientele among the chhotolok, depicting Alokeshi, Nobin, and the seducer Mohanto.<sup>91</sup>

Apart from the plays centring around the seduction of a married girl, and her subsequent murder by the husband, all through the 1860s, 1870s and 1880s, Bengali society was being inundated by plays of the Mohanto-Alokeshi type, which pointedly satirised the Western way of life many Bengalis had adopted. These swept through a broad range of moral crimes, like loose living, smoking, and womanising: for young boys even not studying was a potential crime. Many plays targeted the essentially good-hearted boy, who fell into bad company, did not study, and ended up in jail.

However, special attention was paid to the deviance of women from the rigid codes

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<sup>91</sup>Sumanta Banerjee, The Parlour and the Streets: Elite and Popular Culture in Nineteenth Century Calcutta, Calcutta, 1989, p. 132.

of conduct laid down by society. The punishment reserved for such instances of social deviation was not pushed to the extremity of women being thrown into jails but the awesome and mysterious figures of the *thana* and the police figured conspicuously in raising of a kind of social bogey. There was a virulent castigation of such Western practices like "taking the air", a Bengali euphemism for taking a walk, or speaking in English, which were tantamount to becoming a *memsahib*. All these outré activities somehow seemed to result in the appearance of the fearful, Hindi-speaking *jemadar* or the *paharawala*, or the equally fearful, half-Hindi, half-English speaking English official.<sup>92</sup>

The plays of the "Mohanto-Alokeshi" genre, revolved around an actual social crime. The whole episode was triggered off by the seduction of a young married girl, Alokeshi, just 14 years old, by the Mohanto of Tarakeshwar, an extremely powerful religious figure in charge of the "Shiva" temple there. Her husband, a young man called Nobin Banerjee, worked at a press in Calcutta and paid his wife periodic visits. Alokeshi's father had remarried after the death of his wife; his second wife was a young woman. To supply her incessant demands for ornaments and a luxurious life, so one version runs, the old man became a party to the sale of his daughter's honour to the covetous Mohanto. However, all the versions were unanimous on the point of Alokeshi's unwillingness to become the mistress of the Mohanto. This could be interpreted in two ways. The reluctance of Alokeshi to step outside the dictates of society made her unwittingly guilty of a crime of such gravity that there was only one honourable exit open for her - death. Alokeshi echoed this conviction again and again even though she knew that she had been seduced, after she had been drugged by her step-mother, under the pay of the Mohanto. But even in her own eyes, her character had become so smirched that she felt herself bound to continue the depravity, regardless of her aversion for the Mohanto. It was only possible for society to perceive a "fallen" woman as totally guilt-ridden, even if she had colluded unwillingly in her own

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<sup>92</sup>*Ibid.*, pp. 111-12.

downfall. It could not envisage the enormity of Alokeshi actually triumphing in her fall from social grace and such a situation could not or would not be contemplated by these social dramas. The fact that this was a real life situation did not detract from perhaps factually distorting motives to suit what the society wanted to believe and depict via the medium of the plays.

Nobin, Alokeshi's husband came post-haste to her father's house to enquire about the truth of the rumour about his wife. Some versions left Nobin to find out for himself this disgraceful scandal. Though Nobin was incensed, he wanted Alokeshi back as his wife, and not discard her, as Alokeshi herself fully expected. The Mohanto, however, would not relinquish Alokeshi, and to prevent her from continuing to be the mistress of another man, Nobin murdered her. Her murder is not seen in any other light than the just end of a "fallen" woman. She is made to view it so in the numerous plays, and also to see her murderer as her deliverer. Thus, after the first blow has been struck she declared: "There is no harm if I die, but I am anxious about what's going to happen to you!"<sup>93</sup>

Significantly Alokeshi's murder was totally bypassed; her murder at Nobin's hands was considered "just" and "legitimate" and she herself was made to whitewash her death in her dying speech and to focus attention on "what's going to happen" to Nobin. From this point onwards, all the plays revolved around the two central figures of the Mohanto, the villain, who had dared to seduce the wife of another man, a Brahmin to boot, and Nobin, the tragic and heroic figure, who faced the charge of murder. The Bengali literature made it quite plain that society would not have been satisfied had it not witnessed the utter degradation of the Mohanto. All the plays depicted the Mohanto as being suitably degraded by the colonial jail. They all terminated with the Mohanto being marched off to the jail, bound, in the custody of rough policemen. The jail scenes, where the Mohanto was punished beyond his endurance, were drawn with great attention to details.

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<sup>93</sup>Mahesh Chandra Das Dey, Mohanto - Alokeshi Nataka, Calcutta, 1281(Bengali) 1874, p.26.

The social values attached to the worth of women were so low that the utter negation of Alokeshi's murder and the adulation of Nobin is not really surprising. Bengali society was ecstatic suddenly to rediscover manliness in a man, who would not surrender his most cherished possession, his wife, to another man, and preferred to kill Alokeshi, rather than quietly discarding her and remarrying. This aspect of Bengali society's involvement with Nobin is brought out by Bholanath Mukhopadhyay; in strategically placed conversational gambits, ranging from discussions held by drug addicts in the most disreputable ganja-smoking dens, to conversations held by the *bhadralok* in respectable locales, like outside the court-rooms where the trials were being held, the author in one sweep indicated the social pariahs and the respectable folk being as one in their concern for Nobin's fate. The choosing of the sites is therefore deliberate on the author's part. In the ganja-smoking session, he interpolated value-loaded discussions through the addicts:

One of the addicts: That is the work of a man! To have discarded a wife would actually mean getting smeared with black on the face [getting disgraced]. Had he done so, nobody would have mourned Nobin's fate.<sup>94</sup>

The owner of the den also participated in the general gloom, following Nobin's impending sentence of transportation to the Andamans. He declared: "I'm really upset .... Nobin's sentence of transportation for life has been passed." Somebody asked him about the exact location of the place of exile and though he professed ignorance as to its geographic situation he was sure it began with an "And". In spite of his ignorance he could however assure his audience that he had "heard it is really vile!" Another sympathiser of Nobin, indignant at the thought of Nobin actually being transported for murdering his adulterous wife, declared: "What do you say to this, eh? If I ever had a kingdom, I would empower a husband by law to kill his wife if she committed adultery".<sup>95</sup> Fortunately, he did concede that some proof should have to be provided, before such legal murder could be possible.

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<sup>94</sup>Ibid., Fourth Act, Scene I, The Den of Ganja Addicts.

<sup>95</sup>Ibid.

The educated middle classes also have Nobin on their minds and on their tongues. A gentleman described that "even school boys mock and spit on the Mohanto, and throw stones at him" while another typical middle-class man exclaimed: "Baboo! I've never heard of, or seen Nobin before! But I'm praying to God so that the Judge's heart softens towards Nobin".<sup>96</sup> These plays, therefore, do make their point. That first of all the indigenous society considered the Mohanto to be far more guilty than Nobin and secondly, the Mohanto had to be punished. There was tremendous pressure on the English judge and the colonial legal system to accede to the demand for "justice" from Bengali society. The demand for the reduction of Nobin's sentence and the maximisation of the sentence passed on the Mohanto reached a higher and higher pitch as the trials drew to a close. Thus even though the Mohanto commanded the entire treasury of the Tarakeshwar temple, and he was rich enough to have an English barrister, Jackson, as his defence council, he could not escape a three year prison sentence and a fine of Rs.2000.

In the satire by Yogendranath Ghosh, Mohanter Ei Ki Dasha, the pronouncement of the Judge while passing judgement was significant:

Mohanto's councillor has objected to the evidence [which according to Jackson was not sufficient to indict the Mohanto of the crime]. Truly in England, the gathering of evidence in a case like this would have been very difficult. But I am not passing judgement on an Englishman. I will view the matter in the way such matters are perceived by the people of this country. In this country everybody knows that a female is of a bad character if she is seen sitting and talking to a man not her relative. Just witnessing such an occurrence is proof enough...<sup>97</sup>

The Mohanto's imprisonment was celebrated by Bengali society, if the Mohanto-Alokeshi satires' savagely jubilant tones, the number of plays that were coming up on the same theme,

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<sup>96</sup> Ibid., Third Act, Scene in Front of the Hooghly Sessions Court.

<sup>97</sup> Yogendranath Ghosh, Mohanter Ei Ki Dasha, Calcutta, 1873, p. 80.

and the Kalighat pats, are anything to go by. Yogendranath Ghosh actually thought it necessary to add two pictures as necessary adjuncts to his play. One was of the Mohanto, with his hands tied behind his back, being led off the jail by a constable. The other one was the Mohanto tied to the oil-press in the jail.

There were fast songs, with quick beats, mocking the Mohanto's infatuation with another man's wife. The physical tortures involved in pushing the oil mill, the constant ill-treatment by the jail officials, the bad food, the refusal to give water (the height of inhumanity was the refusal of "*Theshtar jal*" concept: the same imagery is used to depict inhumanity in other plays as well), the stringent jail regime regulated by bells, were all graphically described.<sup>98</sup> It was obvious that no fate could be too bad for the Mohanto. The colonial jail was seen to have its uses after all. These ambiguities regarding the colonial legal and penal institutions, which revealed the various degrees and the many-layered acceptance of the colonial control, were part of an extremely complex process of the bhadralok assimilating or discarding ideas and practices. It was part of the identity-formation of the bhadralok, especially in the matter of morals, where even the chhotolok, and at times, even the Muslims, were co-opted to present a united front to alien institutions. The reaction was even more complex as government intervention was seen to have its uses, in matters of the punishment of seducers, at the same time, paradoxically, springing from the same watershed of the desire for intervention, was the desire of the non-intervention of the government when it came to uxoricide by the husband or by the husband's family. Thus the reaction of the bhadralok to Nobin and the Mohanto cases ran on parallel lines, condemned never to meet. It was the desire to see the seducer punished and humiliated that the prison scenes were drawn with such ferocity. Thus, in Mohanter Dapha Rapha, even the prison hospital and the prison doctor were brought into play, to highlight the Mohanto's sorry physical condition after being exposed to the rigours of jail discipline. In yet another, even though the

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<sup>98</sup>Surenchandra Bandopadhyay, Mohanter Dapha Rapha, Calcutta, 1873, Scene in Hooghly Jail, Scene II, p.8.

Mohanto pleaded his inability to pull the oil-press, the jail-keeper, a Muslim, kicked him, which was another concept of utter degradation - that the Mohanto, the high-priest of Tarakeshwar kicked by a jail official, that too a Muslim! The constant beatings forced him to pull the press slowly, but he fell ill and vomited. The jail inspector, an Englishman, called the civil surgeon, suspecting trickery: "Well Doctor, I say examine this fellow, [and see] whether he is capable of work or not". The doctor replied: "I find that this man has a nice robust constitution and quite capable of work".<sup>99</sup> The Inspector ordered the jailor to set the Mohanto on the task of breaking stones, seen to be the toughest punitive task by the bhadralok, should he pretend to be ill once more.

Thus, while jail discipline had evoked censure from the bhadralok on the grounds of inhumanity, the same for all punitive practices are made to fit with the need for an "extreme" punishment (only provided by the colonial jails - here one gets the impression they were matchless for their rigour in the Bengali mind) for a crime worse than murder. This, then, was the extremely ambiguous viewing of the colonial penal apparatus. All the grim images raised by the jail elicited a kind of tacit approval from the society when it came to the punishment of the Mohanto. In the case of Nobin, conversely, there was universal clamour for the lessening of his sentence. Possibly the concept of being removed from society took away the full impact of the sentence of transportation; because there was no precise knowledge of what transportation actually entailed. There was merely relief in certain quarters that Nobin was not going to be hanged.

There was another brand of preoccupation with crime, thrown up by professional malpractices. The Daktar Babu Nataka (Drama) explored this kind of criminality. The play was taken seriously by the critical review in the Calcutta Review, which noted the problems presented by the play and remarked: "The picture is a fearful one and a hateful one; but who will say it is untrue?"<sup>100</sup> Interestingly, the playwright himself was a doctor, and in the

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<sup>99</sup>Bandopadhyay, Mohanter Dapha-rapha, pp.8-9.

<sup>100</sup>Calcutta Review, Vol.LXI, No.CXXII, 1875, p.xvii.



introduction he stated quite clearly that his "aim" was not to scale literary heights, but to set his "trusting" countrymen on their guard against the more unscrupulous members of his profession. Here, one finds a highly self-critical appraisal of society, the professions and one's own position within it, as a professional. The unethical practices within the medical profession were scrutinised and exposed, and at the same time, affirmed the author's belief in the penal system, where the long arm of the law sooner or later put malefactors behind bars. Here jail is again shown to be the end to any kind of illegality:

I do not have any fixed prejudice about doctors ... : unfortunately, because of a few, the whole profession has generated in the minds of the intelligent people a deep aversion and suspicion of doctors ... I am only stating what I have witnessed or heard about from reliable sources ....<sup>101</sup>

The author took up such medical crimes at three levels. To begin with, he condemned, all those who treated the medical profession as a quick way to get rich, eliminating all professional ethics and commitment for other's welfare. This variety were cheats, who discovered many ways and means to deceive the gullible people, with an eye to illegal profit. Watered-down medicine, and the use of wine-bottles with labels on them to make the medicine cabinets look impressive, were just a few examples of such trickery. A young doctor, Vinod Bihari, was an example of this brand of swindlers. He had a clique of like-minded doctors, with whom he colluded and sold liquor under cover of medical prescriptions. The law, even though aware of such fraudulent practices, was powerless. The sergeant, an Englishman, and his constable, though detecting such underhand sale of brandy, could not take any step for its prevention. A doctor's prescription made the availability of liquor legal, and when the sergeant demanded to see the prescription, which was then produced, he was rendered helpless: "I really can't do anything. There is a doctor's prescription".<sup>102</sup>

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<sup>101</sup> Ghosh, Daktar Babu Nataka, Introduction.

<sup>102</sup> Ibid., pp.104 - 06.

This, then, was another area where the bhadrakalok would have liked to see the legal and penal system more effectively operative, and the malefactor put behind the bars. Vinod's unscrupulous behaviour therefore rendered him in the author's eyes a suitable candidate for the jail, even though he had not committed the crime he was finally arraigned for. Vinod also did quite a brisk business, by trading on the average person's aversion to courts, and giving false medical certificates for money. In this also can be seen a deep distaste in the average Bengali for courts. Their efforts to wriggle out of any court appearances even as a witness is described thus:

A person: Mister. You have to give me a certificate.

Vinod: Why?.... What's wrong with you?

Person: Er- ... - someone in Hooghly has asked me to appear as a witness.<sup>103</sup>

However, unfortunately for Vinod, these professional malpractices gradually built up for him an evil reputation; he is approached by an unscrupulous man: and he is asked to kill the new-born son of his widowed sister-in-law, so that he could lay his hands on the whole of the property.

Vinod: Poor lady ! So recently widowed! With such a young son! What a heartless, wicked, man! Asking me to kill the baby after its birth! No ... I can't do it ... But the temptation held out is not negligible - God! Rs. 50,000! A rich man overnight!<sup>104</sup>

Though Binod resisted temptation, his sins caught up with him. He was asked to account for a murder he never committed, arrested by the police and hauled off to jail.

Another kind of crime, this time social, had different but grave consequences for another doctor, Manmath. He tried to make love to a pretty young widow, taking advantage of his easy access to the *andarmahal*. He was socially disgraced and lost his lucrative practice for his social transgression. This then was another aspect, which could be seen as

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<sup>103</sup> Ibid., p.111.

<sup>104</sup> Ibid., p.112.

an inevitable consequence, after a person is marked out by the police - the social disgrace. This led to a melting away of friends. This is shown in the plays as a complete isolation of the criminal ( the only exception here is Nobin). But there is not just moral disapprobation involved. There was also a deep dislike of getting involved with the police, with courts, and being questioned. Was it a psychological disjunction from a totally alien system which caused this total distancing from all such foreign legal and penal procedures? Perhaps, such matters were perceived as abnormal, not part of society, and therefore alarming.

In Jail Darpan, the prostitute, Viraj, became panic-stricken at the thought of the police invading her house. She flatly refused to help Sibanath when he begged her to hide him: "No, I can't do that - for God's sake leave my house, otherwise the Sergeant and constables will create problems for me".<sup>105</sup> She remained adamant, in spite of Sibanath's pleadings and declared, "God, I cant tell lies to the `Thana- police'. They will arrest me as well".<sup>106</sup>

In Daktar Babu Nataka , there was the same fear, but this time mixed with a tinge of righteousness. A friend outraged at Vinod's corruption, and fearful of the Sergeant, left after the Sergeant had departed. Vinod was astonished at such sudden departure:

Vinod: Are you leaving so soon?

Friend: Are you asking me to become a guest of the police?<sup>107</sup>

In the Mohanto-Alokeshi play, by Mahischandra Das Dey, the constable goes up to the neighbours and threatens them with dire consequences if they refused to impart information. The neighbours deny all knowledge, even though they had been most interested in Alokeshi's movements:

Constable: Look if you have seen anything , you'd better tell, or else evil will come to you.

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<sup>105</sup> Jail Darpan , p.21.

<sup>106</sup> Ibid.

<sup>107</sup> Daktar Babu Nataka , p.106.

Neighbour: We do not know anything. How are we to know what has happened in this house at night?<sup>108</sup>

In Mohanter Chakrabhraman, this attitude is more evident when Alokeshi's body is discovered and a neighbour remarks to three other equally curious neighbours:

First: It is not safe to stay here any longer. The police will come and arrest all of us.

Second: You are right, let's leave.

Third: He probably saw red and killed her. But now, God only knows how many of us will get involved in this murder. Faujdari cases are not to be taken lightly. Just thinking about it [such involvement] makes one shiver. It is not wise to stay here any more.

Fourth: Let's go quickly.<sup>109</sup>

Another conversation about the murder revealed panic at a different level, involving the *andarmahal*, a deeply protected area of society:

Villager: This is terrible! It is a respectable gentleman's house, their women-folk will be pulled about.

A neighbour: You've said it. It is no light matter. In this case, there is no telling the amount of suffering which will be undergone by lots of people.<sup>110</sup>

Thus, while the common people believed that the principle *Jeman Karma Temni Phal* or "as you sow, so shall you reap", applied to miscreants, they tried to stay away from it, dissociated themselves from the process in no uncertain manner. The inevitability of apprehension after any committal of crime is practically driven home. The images of the lost souls in jails, Tarini, Gopal, Madhu, Paran, Nedheeram, and the Mohanto, are all made to suffer tremendous physical privations. However, the Mohanto's sufferings elicit only a

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<sup>108</sup>Mahishchandra DasDey, Mohanto-Alokeshi Nataka, p.29.

<sup>109</sup>Bholanath Mukhopadhyay, Mohanter Chakrabhraman, 1280 (Bengali Year), Calcutta, 1873, p.65.

<sup>110</sup>Ibid., p.65.

jubilant response which warn similar transgressors about the dangers of toying with rigid social norms.

In all these plays, stereotypes of criminals are reinforced - Sibanath in the dissolute babu image, his three friends as ruffianly thieves, the Mohanto as seducer of another man's wife, and therefore beyond pardon, and Nobin as the noble murderer, who is sentenced to transportation, but still remains the hero. With the exception of Nobin, the miscreants receive their just punishment in jail.

An observation has to be made about the use of the word, "jail" in Bengali, which was used as early as 1860, in Neel Darpan, and was certainly frequently used in the 1870s. It is significant that the Bengali literati used the word "jail" and not its Bengali synonym - "*Karagaar*". "Jail", in its turn, was linked to the colonial administration. Maybe one can infer from this that "jails" were seen as colonial administrative appendages. The question may be raised as to why the "jails" became so internalised as to be inseparable with the idea of justice? It is obviously a middle-class limitation in the Bengali-society, following the class bias of the playwrights, but there are deeper depths, which may form a different line of inquiry.

In the 1880s and 1890s, another playwright, Girishchandra Basu, while writing plays about the Bengali middle classes, used the jails to highlight their problems. The middle classes, especially the lower middle classes, who, despite their *bhadralok* status, and therefore bound by all the restrictions of the middle-class society, fell victims to monetary difficulties. Because of financial difficulties, especially the enormous expense of the daughters' marriages, or fraudulent relatives defrauding the simple man of means, the lower middle class was exposed to the rigours of the jail. That was the end of the road as far as the unfortunate middle classes were concerned. By this time, the middle classes were imbued with the fact that stealing, or not "honouring one's word" were breaches of social etiquette. Not being able to uphold these principles was a matter of shame. At the same time, through circumstances beyond one's control, such infringements of the social code led to moral

debasement, which in turn led to the jail portals.<sup>111</sup> Jail was viewed as retribution for social offences. By the 1880s jails were being used, significantly, in plays, where the bhadrolok ended up, after losing their middle-class morality - which might include anything from drinking, visiting brothels, keeping bad company; generally such bad habits would slip naturally into thieving, kidnapping women, in short "criminal" behaviour, as has been discussed before.

Girish Basu's plays reflected the Bengali's obsession with the bhadralok code of behaviour - transgression of these meant punishment. Girish Basu was one such playwright who made use of the flux and the subsequent disillusionment of the bhadralok about the legal and penal institutions, as these were perceived to be instruments, not only of the colonial government for the subjugation of the indigene, but had actually become the weapons of every fraud and cheat in town, who was familiar with the "unfamiliar" language. This was the government's duty to combat, as a part of the justification of the "rule of law". In the play Prafulla,<sup>112</sup> of the three brothers, the youngest had a sense of honour, though he was wild, the eldest had become propertied after a lifetime of struggle, while the middle brother, who was an attorney, was a schemer, and plotted to get his hands on his brother's property. Being an attorney, it was easy for him to get his brother to sign away his property. He also framed his younger brother with the theft of a pair of earrings,<sup>113</sup> crimes which were punished by the penal institution as the climax of the play, but only after he had destroyed the entire family morally and physically. The youngest brother, conscience stricken at his way of life, accepted the false accusation and went to jail. The eldest turned into a permanent drunkard.<sup>114</sup> The youngest brother's stint in jail brought out many commonly-held opinions

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<sup>111</sup> Girishchandra Ghosh, "Balidaan", Pramathanath Bishi (ed.), Girish Rachana Sambhar, Calcutta, 1963, pp. 380-381.

<sup>112</sup> Ghosh, "Prafulla", pp.85-208.

<sup>113</sup> Ibid., pp.127-29.

<sup>114</sup> Ibid., the eldest brother, at one time the epitome of respectability, is shown to be degraded morally. pp.137-38, 160-61.

about the jails, held by the women and people. The plays so far discussed did not engage with the feeling of disgrace that could have been felt by the *bhadramahila* - for them the world of the jail was so entirely foreign that they were not familiar with all the facts, apart from the disgrace, and that the forced work in the jail was beyond the endurance of the *bhadralok* who had the misfortune to go there.

In Prafulla, Prafulla, the wife of the dishonest brother, was so gullible as to believe her husband's assurance that if she told the court that Suresh had stolen the earrings, it would not be as bad as the truth - that Suresh had taken the earrings from her by a trick. Ramesh was actually believed when he tutored Prafulla about evidence: "Listen, if you do not say such a thing, Suresh will be imprisoned for the Englishman would be even more angry if he thought that Suresh had actually taken the earrings from a woman by a trick, and Suresh will be jailed for sure".<sup>115</sup> The mother actually goes mad when she learns the carefully-guarded secret of Suresh's imprisonment for fifteen days, which in her mind was coterminous with breaking stones.<sup>116</sup> The eldest daughter-in-law, Gyanada, who knew of it, was prepared to give the last of her jewellery, and she declared to a trusted servant, "You are like my own son, but I have never come out before you - But now I feel like going to the jail - daroga and clutching his feet. I have been much more hurt with this problem of Suresh than with him (her husband, who had taken to drink)". The jail sentence meant "breaking and pounding stones", and she feared that as he was "a young boy, if he was set to break stones, he wouldn't survive".<sup>117</sup>

Again, Suresh, in the court accepts the blame, for owning the truth would mean that Prafulla would have to give evidence in court, and this he wanted to avoid even at the cost of going to jail. Suresh had been portrayed as the "*bhadralok*" who had suddenly rediscovered the moral values of being one, and the playwright uses Suresh to declare what these were:

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<sup>115</sup> Ibid., p.136.

<sup>116</sup> Ibid., p.166-67.

<sup>117</sup> Ibid., p.153.

Suresh: I had got the earrings by a trick- no, no, I had stolen them ... punish me. A low man like myself deserves to live with thieves and robbers .

: Keep my request - leave the bad company of such as I - be honest, study and do try to do well ...<sup>118</sup> (This to a friend) .

Within the jail, Suresh was thrust amongst the thieves and robbers, and had been exposed to a completely new underground culture. Suresh was broken-hearted at the thought of the 15 day sentence, but he heard one prisoner consoling another new-comer- "Why are you crying? Six years are going to pass unnoticed. I've been here for the past five years, it is only a little difficult in the beginning, then you get used to it, and you will get fat like me." Another prisoner scoffed - "Oh! the bastard's been here only for eight days!" while yet another shouted, "Give the bastard a knock on the head!" Suresh was flabbergasted at the vicious language and violent boisterousness, when the mate turned on him and shouted "What are you watching open-mouthed, *sala*?" and beat him.

Suresh: Oh! Mother!

Mate: Ha!Ha! there is no mother here, no father. Break the stones, you bastard; hit harder, you have to finish this pile.

Suresh: Oh brother, I cannot - I've blisters on my hands.

A prisoner: Hey, Hey, the delicate darling's got blisters.

Another prisoner: What will you give if I do half the pile for you?<sup>119</sup>

The completely uncultured speech, the rough address, the different rules of survival were perceived by the bhadralok to be the part of the jail life, to which no bhadralok could possibly adjust. What brought Suresh to the brink of death in fifteen days, the chotolok could withstand for five years and still "get fat". A friend of Suresh rescued him from the jail, and for three months Suresh remained senseless from his stint in the jail. The mate gave voice to the bhadralok idea about the jail, when he informed Suresh about the best way of

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<sup>118</sup>Ibid.,pp.140 -42.

<sup>119</sup>Ibid.,p.147.



staying well in jail. Sixteen rupees to the mate in the beginning would enable Suresh to stay in the hospital in great comfort. If he mixed freely with the jail-company, and "splashed money about" he would understand what fun jail could be. It was not called the "father-in-law's house" for nothing, for liquor, ganja, for that matter, anything else could be had. But, he warned Suresh, if he tried to show that he was a bhadralok, and tried to be genteel, then breaking stones and the mate's whip would be his lot. Suresh certainly could not be anything else apart from a bhadralok, and he is rescued at the end of fifteen days when he is literally at death's door. The difference between the bhadralok and chhotolok, as perceived by a member of the bhadralok class, is that the chhotolok without self-respect, shame, pity, rough, boisterous and without any moral code. He was a natural survivor and diametrically opposite to the peace-loving, soft-spoken bhadralok who could not survive in such adverse conditions as in a colonial jail.. The jail closed on Suresh, after he had been mercilessly beaten, till he bled from the mouth, and was taken off to the hospital.

There was also a sense of foreign time - that bells are a part of an alien and harsh disciplinary regime was conveyed through the bells ringing for even mealtimes - thus rendering meals impersonal and devoid of sentiment - something which meals symbolised in the Bengali culture. Indeed, the fact that *faujdari*, *pyadas*, and jails were without compassion were depicted in the plays as the victims being arrested at the instant of having a meal or on the point of having water: for example in Neel -Darpan, Rebati, the wife of Sadhucharan begged the *pyada* to wait while she fed Raicharan - "he is a growing lad, by now, he'd have had two meals; can he walk that long distance to *saheb's kuthi* on an empty stomach? Please ... in the good name of *saheb*, let him first eat something ... !" <sup>120</sup> Sabitri, Golak's wife, also thought of the hardships Golak would face in prison regarding something as basic as meals, as what was horrifying was not just the poor quality of meals, but the impersonal nature of it as well. Thus the play, Neel Darpan indicated the lack of homely

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<sup>120</sup>Rao, Blue Devil, p.190.

sentiments and fine quality rice within the jail, which would distress the old landowner, a decade later, the grim picture of the jails had become an accepted fact within the bhadralok, where the common observances of humanity were not maintained. Thus in Girish Ghosh's plays the cruelty and cupidity of the jail officers were part of the accepted tradition of Bengali drama and in line with the newspaper reports which were published periodically. Jail Darpan, too, had an exposition on the barbarity of the jail officials, where a convict narrated how the *Saheb* had the cook whipped while he was still in the middle of his evening meal, because a prisoner had complained of not having his quota of food. After fifteen strokes of the lash, the *Saheb* ordered him back to the meal, at which the cook stated, in tears, his inability to eat. The *Saheb* lost his temper, and declared that if he did not go back to his meal, he would be whipped again, and so the cook had to eat, while still smarting from a whipping.<sup>121</sup> Thus even a meal was turned into an occasion for the display of tyranny; not only that, a victim did not have the option of refusing a meal he did not want to have. The quality of the meals offered to the prisoners also caused a murmur of protest from the prisoners, where nothing was overtly mentioned, only covert mutual complaints were exchanged. In Jail Darpan, Gopal came out with the bad food he had eaten in Alipur Jail - "I was given food only once a day - that too, it was a horrible mixture of rice and husk. At times, I used to be so hungry, I actually bit into the bricks and stones",<sup>122</sup> while reminiscing on his past jail experiences. The jails, completely bypassed the cultural backdrop of the Bengalis, by insisting on the time-factor by ringing a bell for meals. The withholding of water to a thirsty man, on the grounds of strict maintenance of discipline in the jail, was again an anathema to the cultural concept of the bhadralok. Jail Darpan again shows how even a sip of water is denied to the prisoners, Gopal and Paran, and both of them die through sheer ill-treatment. While they were begging to be released from the oil-press and be given water, the Magistrate whipped them and mocked "Do you want water or would you

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<sup>121</sup> Jail Darpan, pp.44 -5.

<sup>122</sup> Ibid.

like to have lemonade?"<sup>123</sup>

Three years later, in 1878, another play, called Surendra Binodini Nataka, author unknown, was published, which was banned by the government, because a real figure, Macrendal, the Magistrate of Hooghly, was depicted as the amoral and cruel English officer.<sup>124</sup> The author touched upon many grievances being aired in the newspapers of the time, using the prisoners' conversations amongst themselves, generally expressing disaffection with the Magistrate. The prisoners, thus, touched upon the issues of bad food, complete disregard for government regulations regarding the correct ration for every prisoner, back-breaking labour, unfair utilisation of the prisoners' work for personal purposes by the magistrate, and especially the rape of their wives and sisters by the magistrate of Hooghly. The disaffection led to loose talk of a "prison insurrection" after the fashion of the jail-break at Hazareebagh.<sup>125</sup> And there is a jail - insurrection - with "political disaffection" seen as the cause of the jail-break. The oppressive magistrate was lynched and killed, and some jail guards, "collaborators" who were an integral part of the administration of the injustice meted out to the prisoners within the structured power-play of the jail, were also killed. The prisoners' imprisonment and their breaking free was made to represent the aspirations of the nation:

The torture of the English cannot be stood any longer. Either we will snap the iron shackles around our feet, or die in the attempt! Come to us ... ! To break down the walls ... we need to unite ... When will the day come when all the jails made by the English will disappear from this country ... !<sup>126</sup>

One can thus see the two trends in the political consciousness of the Bengalis emerging. Though the majority were scared of the jail and the faujdari courts, by this time,

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<sup>123</sup>Ibid., pp. 48-9.

<sup>124</sup>Anonymous, published by Upendranath Das, Surendra Binodini Nataka. Calcutta, 1879.

<sup>125</sup>Ibid., pp. 22, 23.

<sup>126</sup>Ibid., p. 46 -8.

the jails were being used as the political space where the British rule could be challenged. Simultaneously, the exposure of the naked authoritarianism of the British rule, with all its injustices and upturning of the very principles it claimed to uphold, were being undertaken through the medium of the plays and the newspaper reports. There was a spate of plays in 1905-06 by Girishchandra, Dwijendranath Roy, Amritlal Bose, and many others, but as Sarkar points out, using Muslim rule as metaphor, where the playwrights translated "contemporary radical political ideas into pseudohistorical terms".<sup>127</sup>

This was the beginning of the crack-down on all the plays which could be said to be utilising the legal and penal institutions to stir up political agitations. By the late nineteenth century, and of course, by the early<sup>128</sup> twentieth century, dramatic language and imagery changed to counter the greater vigilance of the government. A typical example of such drama, using legendary figures from the Ramayan and the Mahabharat, was a play named Karagar, was enacted on 24 December, 1930, for the first time, and then again, because of its resounding popularity, on the 8 August, 1931.<sup>129</sup> By 1950, eight editions of the play had been published. Significantly, tragic victims like Basudev and Devaki, Kamsa's brother-in-law and his wife and the former's sister, were chosen. The king of Mathura, Kamsa, had been warned that a child of Devaki would dethrone and kill him. For that reason he had his sister and her husband thrown into the dungeons, and all the children born in captivity murdered. However, the child, Krishna, the incarnation of Vishnu, the Preserver, was born, and was spirited away by Vasudeva, and the heavy gates of the "karagar" swung open of its own accord. The play, hinged on the "puranic" story, gave a new dimension to the long spell of imprisonment spent by Devaki and Vasudeva. The parallel to the national movement and the sentences of imprisonment undergone by the nationalists had relevance for the

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<sup>127</sup>Sumit Sarkar, Swadeshi Movement in Bengal 1903-1908, Delhi, 1973, pp. 294 - 302.

<sup>128</sup>Ibid., pp.275, 281, Also see Percival Griffiths, To Guard My People, The History of the Indian Police, London, 1971, pp.236 - 37.

<sup>129</sup>Manmath Roy, Karagar, Eighth edition, Calcutta, 1950.

political climate. The prisons emerged in the 1930s as a "holy pilgrimage", as the imprisoned Devaki (finally a woman's voice), uttered, upon Kamsa's futile attempt to enter the prison he himself had erected:

*Devaki*: No, you can't get in! Today, all the country's *mahatmas*, *punyamatmas*, and the *dharmatmas* - the lord himself has been born inside the walls of the prisons - the prisons are now a shrine for holy pilgrimages, the prisons are now heaven on earth. You, a sinner, cannot enter this holiest of holy places, but I can come out, and these doors cannot stop me ...  
(and as she moves towards the doors, the prison doors swing open)<sup>130</sup>

The transparent allegorical reference to the jails of the British government through the medium of the puranic plays was one of many. The political prisoners frequented the jails via a public route - the criminal courts, thereby playing on the public imagination - and which plays like this heightened. With the added spiritual and religious element, which historians like Sumit Sarkar have pointed out with reference to an earlier period- specially the Hindu elements used in the Ganapati and Shivaji festivals in the earlier nationalist phase, jails lost much of the fearsome and loathsome image generated over the last eighty years.

### **The Transformed Image of the Jail: Making of a Myth**

As discussed in Chapters Four and Five, the trials of the nationalists in criminal courts, at this juncture, drew on the collective sympathy of the *bhadralok* as a community, and emphasised the misrule of law. The jails, on the other hand, with its emphasis on individual experience and personal humiliations, could not present the spectacle achieved by the courts, but had to rely on the construction of *tyaag* or sacrifice that was beyond the public eye. This sacrifice at individual level could only be made available to the collective consciousness through memoirs, plays, speech - any artefact which mediated between the space between

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<sup>130</sup>*Ibid.*, pp.118-19.

the individual experience of jail and the collective ignorance of such individual experiences. This in turn led to a consciously middle-class construction, which appropriated national figures from all over India and moulded them into heroic figures, who represented the nation's desire to be free. Thus, Chidambaram Pillai, "whose name was little known outside one corner of Madras, is now a popular hero".<sup>131</sup> Tilak had been twice sent to jail, and "on the last occasion, his sacrifice for the country convulsed the whole of India". The refusal to appeal against such sentences were received enthusiastically: "Fancy the extraordinary sacrifices of nationalists like Moulvi Leakut Hossein and the editors of Yugantar and Barisal Hitaishi".<sup>132</sup> The printer of Yugantar was sentenced to two years' R.I. and a fine of Rs.1000, for publishing seditious articles, which proved the newspaper's revolutionary stance. With the third prosecution, its defiant attitude towards jail sentences established it as the ideal form of nationalistic protest which drew directly from the almost legendary power and sentimentality Vidyasagar was famous for. Therefore, like the famous story of Vidyasagar who had swum across river Damodar in full flood to see his mother, the editor of the Yugantar, knowing he would be imprisoned shortly, had gone off to see his mother. When it was feared that he was absconding, he returned and "surrendered without fuss", and showed his readiness to suffer for the nationalist cause, an attitude which "moved even the trying Magistrate".<sup>133</sup> There was an ominously Hinduised concept behind these projections of the image of the true patriot,<sup>134</sup> but there was an attempt to lift the martyrdom of patriots in the colonial jails and the courts above religious divides by extolling "the splendid moral courage" of Moulvi Leakut Hussain and Dr. Gaffur.<sup>135</sup> The heroism of the

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<sup>131</sup>"The Comedy of Repression", Bande Mataram, 26 Mar. 1908.

<sup>132</sup>Bande Mataram, 10 Jan. 1908.

<sup>133</sup>Bande Mataram, 9 Jan. Thursday, 1908.

<sup>134</sup>Sumit Sarkar, Swadeshi Movement, pp.252-316. Also see Indira Chowdhury Sengupta's "Colonialism and Cultural Identity: The Making of a Hindu Discourse", unpublished Ph.D thesis, SOAS, 1993, pp. 308 - 09.

<sup>135</sup>Bande Mataram, 31 Jan. 1908.

aged Moulvi was especially admired as he "was spending the last years of his ... life in the severities of a criminal jail".<sup>136</sup>

In the Lazarus assault case, the bright and cheerful "demeanour" of the young boys and their teachers even when they entered the Dinajpur prison implied composed defiance of the deadly legal and penal institutions of the colonial rule. The two teachers were sentenced to eight months' rigorous imprisonment, while the boys were given four months rigorous imprisonment, and all of them charged under the sections 147 and 324 of the IPC. There was also an emphasis on the support of the whole community, especially the "highly respectable", and the respectability of the young men was stressed as well. This change underlined the fact that these jail sentences did not carry the odium of a average prison sentence, marked by shame and secrecy. Thus, here even the "Pleaders, Mooktears, zemindars, teachers and other respectable men" were seen to support the jail goers.<sup>137</sup>

The pitiless character of the adminisitation was projected when three, "educated, well-to-do, respectable young men", one of them a consumptive, were kept in solitary confinement in cells in the Midnapur Jail on mere suspicion alone, after Khudiram was arrested.<sup>138</sup> There was stress laid on the utter failure of the government to control this spirit of defiance of the fear inculcated for these institutions. Thus political subordination, and dissatisfaction with Lord Minto's rule (after the harsh policy of Lord Curzon), which had unleashed press prosecutions all over the country, highlighted the role of the courts and the jails in shaping a nationalist discourse.

The trial of Bipin Chandra and his jail sentence for six months though "he had committed no offence", was the occasion for further criticism. His return from the jail became an event, and a cause for celebration, as it was marked as a a successful defiance of the British govenment, and therefore became a pattern which was to be repeated in many

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<sup>136</sup>Bande Mataram, 11 Mar. 1908.

<sup>137</sup>Bande Mataram, 17 Jan. 1908.

<sup>138</sup>Ibid., 26 May, 1908.

such jail returns. Going to jail was becoming a religious experience, a ceremonial examination required for a true patriot, something that only the inspired could undertake without flinching. Surendranath's jail experience had remained at the level of a political experience,<sup>139</sup> but Bipin turned it into a religious one, which remained the tone of the nationalists going to jail. The middle-class discourse which had grown around the harsh jail discipline, turned all the hardships of jail into necessary rituals, central to the principle of *tyaag* (renunciation of all worldly aspirations) and self-less devotion to "the mother country". Thus, at this point, the spirit of nationalism made "the squalid surroundings of the jail, and ... each hour of enforced labour a sacrament". The Bande Mataram defined the jail experience of a patriot who had been "tested under the searching fire of difficulties, purified by the chastening influence of suffering".<sup>140</sup> The editor of Sandhya, the venerable Brahmacharya (Brahmabandhab Acharya), who died in jail, provided the inspiration to the younger generation.<sup>141</sup> Again, Bipin, in his trial used the court as an arena of protest, which proved to be an object lesson to others.

His return from the jail brought to the fore many of the facets of the jail discourse that had been built layer upon layer over the past thirty years. The hardships of a prison that was faced by a *bhadralok* was presented by Motilal Ghosh in a manner which recaptured his opinion in the reports he had written to the government in 1894 and a reification of the opinion of the middle classes on the position of "respectable" people in the jails. Ghosh was convinced that six months of imprisonment in the Presidency and the Buxar Jails, despite the special treatment of Pal in jail, had taken off ten *seers* (measurement of weight) of his weight, the reason being - "Respectable people, especially ... in the position of ... Bipin Chandra Pal, run a great risk of life in an Indian prison house .... a dear and beloved brother

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<sup>139</sup>Surendranath Bannerjee, A Nation in Making: Being the Reminiscences of Fifty Years of Public Life, London, Calcutta, 1927, pp.82-83.

<sup>140</sup>Bande Mataram, 14 Mar. 1908.

<sup>141</sup>Manoranjan Guha, Brahmabandav Upadhyay, Burdwan, n.d., pp. 84 - 87.



... has at last come back to us from a house which is full of horrors ...."<sup>142</sup> The reason for Bipin Pal's imprisonment was also couched in a manner which bore the ambivalent attitude of the middle classes towards the jails, a closed space reserved for the housing of the criminals. This was again a product of the evolving discourse over a space of time, with the stress on the non-criminality of Pal, who had been confined in a "prison hole .... surcharged with *miasma* of all that is vile and impure", even though he had committed no "criminal offence" or broken "any law".<sup>143</sup> What Motilal Ghosh and his contemporaries held up and contrasted was the "vileness" of the jails and the purity of purpose and sacrifice that was characterized in Pal's action. Thus Motilal Ghosh could turn the potentially humiliating jail experience of Bipin Pal into an assertion of supreme sacrifice that could only be attempted by a few - "how many of us are prepared to be separated from family and friends and, shut up in prison for six long months, for the sake of a principle?"<sup>144</sup>

The colonial rule's power to imprison after nominal trials was recognised as the action of a foreign power that had set out to crush all protests against its repeated injustices, as was clearly recognised that imprisonment was to be the fate of such protestors: "Bipinchandra Pal is due back in Calcutta a free man once more until it shall please irresponsible Magistrates and easily-twisted laws to repeat his seclusion from the work God has given him to do". And again, for the nationalist, there was no security of person, as the likelihood of being imprisoned for protest was increasing daily, inevitably connected "with the practical certainty of a sentence already fixed and waiting only the idle formalities of a nominal trial for its confirmation".<sup>145</sup>

The era of the political prisoner had come in colonial Bengal. The educated middle-class was conscious of the difference of these prisoners from the general run of prisoners

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<sup>142</sup>Bande Mataram, 30 Mar. 1908, Motilal Ghosh's speech .

<sup>143</sup>Ibid.

<sup>144</sup>Ibid.

<sup>145</sup>Ibid., 10 Mar. 1908.

who inhabited the jails, and yet used the old imagery of the jails to heighten the contrast between the ordinary mass of the prisoners who justifiably inhabited the "vile" space and the pure soul of Bipin Chandra who after the jail experience had come back "purified by an act of self-immolation, with a soul deepened by the long hours of solitude and self-communion ... to call us once more to the task of national self-realisation".<sup>146</sup>

At this juncture, the middle-class opinion about the jails were formed around the idea of a jail that was inhabited only by the criminals, and therefore remained an unknowable world that existed, yet to which the middle-classes had no entry other than through infamy. Thus the truth of the stories that circulated about the jails could be not be tested. But the late nineteenth century and the early twentieth century opened up a new world of the colonial administration to the educated middle-classes, and "the prison came to be colonised by middle-class nationalists".<sup>147</sup> For the first time there was a publicised voice from the inside the jail that told of the "jail experience", an essentially individual experience, in philosophical terms that had the attention of the educated middle classes: "no one who has never been inside a prison can have any idea of what it is. It is not ... anything ... that constitutes the horror of prison life .... all the noble resolves ... [crumble] to dust, at the first touch of the reality of prison- life."<sup>148</sup> This "reality" was the loss of liberty that the colonial rule had the power to impose on the subject race. Thus the awareness that the legal and penal institutions were the weapons of the colonial rulers, that the "rule of law" was a liberal cover that could not hide imperial aspirations, was apparent. B.C. Pal's lucid expression of his jail experience was the first step towards the construction of the jail as a symbol. B.C. Pal also personified the dilemma of the Bengali intelligentsia about the acceptance of the State's right to impose law and order, and the need, in the requirements of the nation, to challenge the

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<sup>146</sup>Ibid.

<sup>147</sup>David Arnold, "The Colonial Prison: Power, Knowledge and Penology in Nineteenth India", in D. Arnold and D. Hardiman (eds.), Subaltern Studies, VIII, Delhi, 1994, p. 155.

<sup>148</sup>Bande Mataram, 2 Apr. 1908.

same law and order structure that held the political fabric of the nation together. There was no alternative to this structure that B.C. Pal could see. He could therefore perceive no other option but to preserve this structure intact. Hence the conversation between B.C. Pal and Kingsford regarding Pal's concern about not offering any disrespect to the Court is intelligible in the light of the fact that he never denied his subjection to the authority of the government, even though he refused to give evidence against Aurobindo Ghosh, as an upholder of free speech.<sup>149</sup> But to such "respectful" resistance the answer of the government was the same as to the ruder versions, for as Kingsford pointed out "you are a great influence in the country and your example is likely to be followed by an immense multitude of people and then where would we be?"<sup>150</sup>

The framework, then, could not be challenged, for if at some point the Indians inherited the structure from the British Government, their own actions would have rendered the administrative frame-work inoperable.<sup>151</sup> Here lay Pal's total rejection of the terrorist movement, for its protagonists openly defied the law, defied the definition of "criminality" that even the educated sections of the Bengali middle class had adopted, by openly propagating the method of assassinations, and going to jail on serious criminal charges. This aspect was brought clearly and boldly to the forefront in the trial and imprisonment of the young men involved in the Alipur Bomb case.

The bhadralok, had by then defined itself as a class on the basis of education, manners, idealism. It excluded the mere possession of money and land as the passport to the world of the bhadralok, an attitude counter-poised against that of the perceived government alliance with the landed and loyalist section: "It may be true that India is an aristocratic country. It honours birth and it honours learning. But the land owners are rarely educated

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<sup>149</sup>Ibid.

<sup>150</sup>Ibid.

<sup>151</sup>Shibdas Chakraborty, Bipin Chandra Pal, Jeeban, Sahitya O Sadhana, Calcutta, 1973, p. 421.

men, and they are often usurers of a low caste ...."<sup>152</sup> Whatever the truth of this statement, the landed moneyed class was perceived to be tied-up with the lower castes, the chhotolok, without the code of behaviour that distinguished the bhadralok. The educated men of high castes, the bhadralok, were held to be the chosen to convey the horrors of the trials and the jails.

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<sup>152</sup>Bande Mataram, 14. Jan. 1908.

## Conclusion

This thesis has demonstrated the ambiguity of the bhadralok response to the courts and the jails from the mid-nineteenth century onwards. These institutions were always closely associated by the bhadralok with loss of self-respect and ignominy. Therefore the response of the bhadralok was wary acceptance of the courts and jails as the two key colonial appendages of control, which only under exceptional circumstances touched one of their own class. The bhadralok coped with such aberrant elements by regarding them as rare cases within their class and excluding them from their social fold, or by subjecting such transgressors to ridicule and contempt.

By the decade of the 1860s the bhadralok started to evolve their own definition of criminal behaviour, which on certain fundamental issues differed widely from the liberal rational principles enshrined in Western judicature. The bhadralok saw no necessity to apologise for the different expectations of the Indians when uxoricidal murders were turned into legal issues. Therefore, the bhadralok acceptance of the moral hegemony of the rule of law was by no means an unqualified acceptance of Western values when it came to the inner space of the *antahpur* reserved for women, which was seen to be governed by a separate set of values altogether. Beyond this space, too, the acceptance of the legal and penal institutions was multi-layered and hedged in by many qualifications. The guilt of a respectable *bhadrasantan* had to be clear to the bhadralok themselves, and so had also to be the type of crime committed. Generally uxoricide was held to be committed under extenuating circumstances, and judicial decisions were best appreciated when they followed the approbation or disapprobation of the bhadralok in the cases where such sentiments were clearly expressed.

The bhadralok fell in line with the colonial government when judicial decisions concerned chhotolok criminals. Moreover, the bhadralok preferred the rule of law to be applied with full rigour to the criminal element of the population. This was seen as one of the justifications for the existence of colonial rule from the 1850s onwards. Failure to convict obvious criminals resulted in an open chorus of bhadralok disapproval. The

loyalties of a hierarchical agrarian society was partially responsible for this kind of bhadralok perception. The zamindars, and the upper classes to a lesser degree, were the manipulators of the legal and penal institutions, as they had money and power. They controlled the dynamics of the agrarian society, generated feuds, riots, and other illegal activities, with the help of their own men, who, as this thesis has demonstrated with primary and secondary data, came mainly from the lower castes or the chhotolok. As these chhotolok retainers were then identified as criminals by the colonial courts and jails, the colonial government created defined categories of criminals belonging mostly to the chhotolok. This in turn reinforced the non-criminal identity of the bhadralok. The thesis has also demonstrated how this self-endowment of a non-criminal identity by the bhadralok evolved over time.

The early twentieth century saw the crystallisation of the non-criminal bhadralok identity. This drew on its combined strength of idealism and a rigid moral code, to face the challenge of the criminal courts and jails posed by colonial rule. But this was the visible outcome of a process which, from the early 1860s, had traversed through a particular trajectory of development. The bhadralok had engaged with the threat the courts and the jails posed to themselves as the "subaltern" elite, and had begun to articulate a discourse which set out the functional parameters of the rule of law as it operated on themselves and on the society as a whole. This led to three layers of acceptance of the rule of law, and the courts and jails as its instruments, by the bhadralok.

First, the rational, universal principles that were advanced by the colonial government as moral hegemony over the colonised society, were accepted as intellectually viable propositions by the bhadralok, on which they were convinced that jurisprudence could be based. Second, these principles, however, were seen to function effectively when at the receiving end stood an outsider to the Bengali society, or the chhotolok as an unprivileged social group. In the 1850s the Santals and the sepoys fell into this category, and therefore the rule of law was justified in the eyes of the bhadralok. Later, when the rule of law operated on members of their class, qualifications on its

operation began to evolve as early as the 1840s. Thus Raja Radhakanta Deb had been arrested as early as 1848 for an agrarian riot, but he was housed and fed in royal style by the colonial government, as he demanded special treatment.<sup>1</sup> The colonial government at this juncture felt the need for privileged treatment of certain sections of the society, and therefore acceded to these demands, while the chhotolok were perceived as an underprivileged category for whom no such special treatment was deemed necessary.

Third, by the 1860s, the colonial government had made inroads in this privileged position of the bhadralok through its indigo policy, which was keenly resented by the bhadralok. The virtues of the rule of law thus began to be qualified from this point onwards, as the demands of the bhadralok changed from recipients of a political order towards a more participatory one. This sharpened the differences between the rulers and the bhadralok, as the fundamental dichotomy between the colonised and the colonial power became apparent to them. From this point, the bhadralok began to create an oppositional identity that challenged the right of the rule of law to legitimately operate on the bhadralok's just demands.

This oppositional identity operated on two levels. The first recognised the state's right to punish criminals, deemed guilty according to the law and the bhadralok. These ranged from frauds, cheats, thieves, and murderers, to adultresses and seducers guilty of transgressing social norms. Within this parameter, the bhadralok, endowed with a moral sense and a moral code, which prohibited them from drinking, gambling, smoking, womanising, using abusive language, or lying, were seen to be generally non-criminal, as opposed to the chhotolok. The chhotolok, with loose morals and vulgar speech, were seen to occupy the desecrated space of the criminal courts and jails with far greater frequency than did the bhadralok, which, again, reinforced their criminal identity. This identity was further given shape by the outpouring of the criminal court-records and the jail records, which emphasised the distinction between the two fundamental social divisions, the bhadralok and the chhotolok, by showing the enormous gap between the criminality of the two.

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<sup>1</sup>"Hooghly Past and Present", *Calcutta Review*, No.194, 1893, pp.347-50.

The second level, taking on the specifically chhotolok-occupied terrain of the courts and the jails, projected the need for a different treatment of the bhadralok within such a harsh and humiliating environment. With the bhadralok's growing experience of the penal and legal institutions, the need for a differential treatment grew more acute. This discourse prepared the ground for a political movement which centred around these institutions that had been established as a chamber of horrors, from which no bhadralok escaped unscathed. This endowed the nationalists undergoing public trials and jail sentences for the sake of a principle with fervent patriotism.

In the process of the formation of this discourse, the bhadralok performed three tasks. First, it took on as a class the categorisation created by the colonial discourse within the sites of the courts and the jails, and reinforced its position as a non-criminal class. Second, it projected its own position as a dominant class with its specific demands, subsuming within it the perceived injustices of the chhotolok, thereby giving more strength to its own voice. Third, it silenced the voice of the chhotolok through its projection of a rigid moral code, that either forced the chhotolok into a position of criminality, even before it, as a class, had committed a crime, or compelled it to conform to the bhadralok code of behaviour.

The oscillations of the bhadralok as a class between acceptance of the moral hegemony of the rule of law, and its rejection, paradoxically, by the standards set by Western rational liberal principles of jurisprudence, have to be contextualised within a broader chronological framework. The rule of law, it must be remembered, came back full-circle in the post-colonial phase, with the accompanying legal and penal institutions of colonial rule. While this does not lie within the scope of the thesis, the bhadralok's absorption of this dominant colonial discourse, despite its seeming rejection of the moral hegemony of the rule of law, especially during the later phase of the national movement, needs to be examined a little further here.

What this thesis examines is the central space between the political narrative of the nationalist movement centring on the courts and jails, and the bhadralok understanding of the necessity of order within the society. The ideal form of the rule of law, as interpreted



by the bhadralok, maintained cultural and social order within the society, and ensured the supremacy of the bhadralok as the class imbued with moral authority within it. The rule of law, in so far as it guaranteed the maintenance of the cultural and social order upheld by the bhadralok, was welcomed by them as a class, for their own moral and social position was perceived to be unthreatened by the functioning of the rule of law. The lower classes, the chhotolok, were seen to be potential threat to the maintenance of this order, steeped as they were in immorality and vice. They were to be legitimately held down by the rule of law, and thus kept in their ordained place in the social and moral hierarchy where the position of the bhadralok was supreme. The courts and jails, seen to operate legitimately on this section of the population, were, from this angle, the surety against any attempt at the subversion of the bhadralok code or disruption of their moral world. And the bhadralok were convinced about the necessity of the rule of law, and the legal and penal institutions which gave teeth to its liberal rational principles, and which could have no other substitute in the bhadralok rationale.

As a "subaltern" elite, completely distanced from political control, moral authority seemed the bhadralok's only claim to assert their own position of superiority over subordinate social strata, the huge body of chhotolok. The thin divide between the two basic social divisions in a colonised society, where the ruling power professedly did not distinguish between different social divisions, and maintained that all Indian subjects were equal in the eyes of the law, meant that it became incumbent on the bhadralok to maintain their own position vis-à-vis the chhotolok. The profession of its rigid moral code had a broad social and cultural context of colonial subjugation.

It might be suggested, for the post-colonial phase, that the necessity for this rigid moral authority was no longer present, as the middle classes had attained political power. Perhaps the narrow educated, middle-class base which had sought to establish itself as the repository of morality and idealism in the colonial phase, could not sustain its idealism in the post-colonial phase, especially when a burgeoning lower economic and lower-caste strata, minus the professed morality characteristic of the colonised Indian elite, (principally because they had never imbibed it in the first place), further diluted its

ranks in a bid to obtain economic and political power. That this middle-class idealism and morality was already under threat, and in the danger of tearing itself apart, even under colonial rule, is the subject of other research projects:<sup>2</sup> it is enough to say here that a possible reason for the anxiety, tension and instability in present-day India could very well be rooted in a search for a new morality and order for which the old can never be a substitute.

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<sup>2</sup>Forthcoming Ph.D. thesis by Sudeshna Banerjee, on "Domesticity and the Family", SOAS.

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Appendix I							
Female Criminality							
1865	3,159						
1866	5,185						
1867	1,968						
1868	2,324						
1872	1,702						
1873	1,777						
1880	653						
1881	566	Married (M)	183				
		Unmarried (UM)	12				
		Widow (W)	27				
		Prostitutes (P)	87				
1882	1,453						
1883	1,365	M	566				
		UM	26				
		W	615				
		P	158				
1884	1,595	M	661				
		UM	28				
		W	717				
		P	189				
1885	1,573	M	666				
		UM	37				
		W	714				
		P	156				
1902	1,433	M	38				
		UM	581				
		W	683				
		P	181				
1903	1,292	M	490	Hindus (H)	888	Under 16 yrs	18
		UM	21	Muslims(M)	291	Over 16 & under 40	907
		W	627	Jains & Buddhists(JB)	17	40 -60	317
		P	154	Christians (C)	12	Above 60	50
				Others (O)	84		
1904	1,240	M	491	H	854		
		UM	30	M	279		
		W	568	JB	10		
		P	158	C	21		
				O	76		

AJRB, 1865 -1904



## Appendix II

### Famine Years

#### Comparative Table of Prison Population

	Men	Women	Total
1865 Total no. including simple and rigorous imprisonment	86,528	3,805	90,333
1866*	1, 08,914	5,956	1,14,870
1869			1,05,386
1870			95,465
1871			94,292
1872			1,12,206
1873*			1,13,770
1876*			1,18,252
1877			1,10,921
1878			1,17,755
1879			1,09,209
1880			1,10,711
1881			95,009
1882			94,348
1883			90,238
1884			95,570
1885			96,206
1867 Only prisoners sentenced to R.I.	63,309	3,728	66,981
1868	61,963	2,872	64,835
AJRB, 1865- 1885, IOL			
* Famine Years			

**Appendix III**  
**Non - Criminal Districts & Criminal Districts**

		1872	1871		
	Name of District	No. of convictions	No. of convictions	Increase (I) or Decrease (D)	Proportion of prison population being 1 in
	Criminal Districts				
1	Calcutta (urban)	1,644	1,234	410 (I)	272
2	24 - Parganas	2,608	1,747	859 (I)	848
3	Jessore	1,737	1,139	598 (I)	1,194
4	Backergunj	1,447	1,235	212 (I)	1,654
5	Hooghly with Howra	1,087	1,031	56 (I)	1,341
	Non - Criminal Districts				
1	Mymensingh	739	615	124 (I)	3,180
2	Manbhoom	708	538	170 (I)	1,406
3	Purnia	476	337	139 (I)	3,602
4	Dinajpur	485	440	45 (I)	3,096
5	Birbhum	313	473	106 (D)	2,223

AJRB, 1872, p-5.

**Appendix IV**  
**Caste Configurations, 1869**

		1869			1868	Increase/ Decrease
Religions,						
Castes	Men	Women	Total		Total	
<b>Hindus</b>						
Goalas	5,212	297	5,509		4,350	1,159 (I)
Brahmans	4,437	187	4,624		4,281	343 (I)
Koybortos	4,301	210	4,511		4,610	99(D)
Kyasths	3,228	45	3,273		3,210	63 (I)
Chasas	2,969	75	3,014		2,460	554 (I)
Rajpoots	2,524	72	2,596		2,630	734 (I)
Dosads	2,252	63	2,315		2,500	185 (D)
Chandals	1,418	37	1,455		1,200	255 (I)
Kurmis	1,287	86	1,373		800	573 (I)
Other castes	7,889	974	8,863		13,855	4,992 (D)
<b>Muslims</b>						
Shaikhs	10,629	401	11,030		11,030	4(D)
Sunnis	9,234	427	9,661		8,356	1,305 (I)
Miscellaneous	1,371	34	1,405		1,566	161 (D)
Total	21,234	862	22,096		20,956	1,140 (I)
Other Denominations						
Hill Tribes	3,183	181	3,994		2,981	1,073 (I)
Misc.	171	1	172		172	-
Total	3,984	182	4,166		3,093	1,073 (I)
Christians	922	12	934		890	44(I)
Total	61,627	3,102	64,729		64,835	106(D)
AJRB, 1869, p.18.						

## Appendix V

### Caste Configurations in Jails, 1874

Aboriginal Tribes		Districts
Bhumji	288	principally Manbhoom
Kol	242	Lohardaga and singhbhoom
Paharia	107	Santal Parganas , Beerbhoom , Bhagalpur
Santals	247	Santal Parganas, Midnapur
<u>Semi Hinduised Tribes</u>		
Bagdi	493	principally Burdwan division
Bauri	362	Bankura, Manbhoom, Burdwan
Bhuiya	124	Chota Nagpur and the tea districts
Chandal	689	mainly in E . Bengal
Chamar	374	very diffused
Dom	703	diffused but mostly N. Bihar
Dosadh	790	Patna and Bhagulpur area
Hari	230	diffused
Koch	204	Assam and Rungpur
Musahar	195	Bihar
Muchi	214	diffused
Pan	112	Orissa
Rajbansi	207	Rungpur, Goalpara, Purnea
Rajmar	145	especailly Gaya
<u>Hindu Castes</u>		
Brahman	1,262	Alipur, Calcutta and Shahabad
Chettri	273	especially Calcutta
Khandait	123	Orissa
Rajpur	668	Patna division
Babhan	532	Bihar
Kayasth	1,099	diffused
Baniya	187	"
Khatri	110	"
Gowala	1,474	Gaya, sarun, Patna, Tirhoot, Murshidabad, Nadia
Ahir	353	Shahabad, Lohardaga, Champarun
Kanada	121	Patna
Chasa	458	Midnapur, Jalpaiguri
Kaibarta	496	Midnapur, Calcutta, Hooghly
Kurmi	595	-
Koeri	271	-
Kolita	144	Assam
Dhanuk	150	Bihar and Burdwan
Dhobi	133	-
Kahar	285	-
Kamar	180	diffused
Suri	153	"
Sornokar	163	"

		District
Teli	251	"
Jogi	139	E. Bengal
Tanti	260	Calcutta and neighbourhood
Kewat	111	-
Mallah	119	-
Pod	128	Calcutta
Baishnabi	186	Midnapur and Burdwan
Crime among the fishermen caste low		
<u>Muslims</u>		
Shaikhs	8,248	-
Sunnis	3,657	-
Pathans	329	-
Ferazis	253	-
AJRB, 1874, pp. 13-14		

**Appendix VI**  
Educational Background of the  
prisoners possibly indicating Status

	Prisoners educated for their position				prisoners only Read & Write					illiterate prisoners			
	Men	W	Total	%	Men	W	Total	%		Men	W	Total	%
1860	872	5	877	1.76	3268	1	3269	6.58		41252	1298	45550	91.66
1861	578	0	578	1.17	3508	5	3513	7.07		44310	1266	45576	91.76
1862	688	0	688	1.18	3660	5	3665	6.31		41252	1802	53782	92.51
1863	575	1	576	0.97	3683	6	3689	6.19		44310	1961	55271	92.84
1864	742	1	743	1.17	4271	4	4275	6.74		51980	2319	58342	92.08
1867	154	0	154	.23	5094	56	5150	7.68		53310	3672	62733	92.09
1868	604	0	604	.93	5238	39	5277	8.14		56023	2833	58954	90.93
1903				2.41				9.06					88.53
1904				1.95				7.66					90.39
1905				1.98				9.22					88.80

AJRB 1864 - 65



## Appendix VII

### Criminality By Occupation

Previous Occupation	1869				1868
	Male	Female	Total	Total	Increase/ Decrease
Agriculturalists	35,309	556	35,865	31,757	4,108 (I)
Labourers, coolies	12,938	609	13,547	15,792	2,432 (I)
Servants, domestic	4,869	935	5,804	8,236	2,432 (I)
Shopkeepers	2,864	241	3,105	2,949	156 (I)
Misc.	1,153	39	1,192	1,205	13 (D)
Beggars	4,494	722	5,216	4,895	321 (I)
Total	61,627	3,102	64,729	64,835	106 (D)
AJRB, 1869, p.21					